

# **Broker Management Handbook**

**January 2002**

**Field Operations**

The Broker Management Handbook is an official and comprehensive instructional tool developed to provide Customs field personnel with guidance in the area of Broker Management. This handbook is established as a compilation of knowledge from Broker Management Officers with many years of combined experience. Their input into this effort has been invaluable.

Our goal is to provide Broker Management Officers with the necessary tools to perform their duties. Much of the work performed in this area is quite complex and legal in nature. We hope we have made the job of our people on the front line easier by providing direction in a format they may find easier to understand.

The Office of Field Operations is fully committed to increasing the ability of field personnel to effectively manage our efforts whether they may be in broker licensing, broker compliance, broker accounts or self-inspection. The complicated world of Customs brokers is ever changing. We will ensure that the Broker Management Handbook will continue to adapt to that changing world with updates and additions as necessary.

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Assistant Commissioner  
Office of Field Operations

<b>Chapter 1</b>	<b>Introduction</b> . . . . .	1
	A. Note on Spelling, Hyphenation, and Capitalization . . . . .	1
	B. Historical Background . . . . .	2
	C. Summary of the Current Statutory Requirements . . . . .	6
	D. Effect of Customs Reorganization on Brokers . . . . .	7
<b>Chapter 2</b>	<b>What is a Customs Broker?</b> . . . . .	11
	A. Customs Broker Defined . . . . .	11
	B. License Required . . . . .	11
	C. License not Required . . . . .	12
	D. Becoming an Individually Licensed Customs Broker . . . . .	13
<b>Chapter 3</b>	<b>Broker Examination Process</b> . . . . .	15
	A. Purpose of the Examination . . . . .	15
	B. General Information . . . . .	15
	C. Application for Examination . . . . .	15
	D. Headquarters Role in the Examination Process . . . . .	17
	E. Port Role in the Examination Process . . . . .	20
	F. Returned Checks for Examination Fee . . . . .	21
	G. “No Shows” and Refunds . . . . .	21
	H. Examinaton Appeal Process . . . . .	22
	I. Freedom of Information Act (FOIA) Requests . . . . .	23
	J. Federal Employees and the Examination . . . . .	23
	K. Special Written Examination . . . . .	24
<b>Chapter 4</b>	<b>Broker Licensing Process</b> . . . . .	25
	A. Application for Customs Broker License (CF 3124) . . . . .	25
	B. Port Review of License Application . . . . .	26
	C. Fingerprinting . . . . .	29
	D. Referral to the Office of Investigation . . . . .	30
	E. Background Express . . . . .	31
	F. Port Review and License Recommendation Process . . . . .	31
	G. License Review at HQ . . . . .	33
	H. Appeal Process for Denial of License . . . . .	34
	I. Port Presentation of Customs Broker License . . . . .	36
<b>Chapter 5</b>	<b>Permits</b> . . . . .	37
	A. Local Permits . . . . .	37
	B. National Permits . . . . .	41
<b>Chapter 6</b>	<b>DBAs, Name Changes, Mergers &amp; Acquisitions</b> . . . . .	45
	A. Doing Business as (DBA) . . . . .	45
	B. Name Changes . . . . .	47
	C. Mergers & Acquisitions . . . . .	48

<b>Chapter 7</b>	<b>Triennial Process</b> .....	51
	A. Purpose and Definition .....	51
	B. Notification to Broker .....	51
	C. Reports Required .....	51
	D. Collection of Status Report Fee .....	52
	E. Update Files .....	53
	F. 60-Day Notice .....	53
	G. Prepare Revocation List .....	53
<b>Chapter 8</b>	<b>Revocation-Cancellation-Suspension of License or Permit</b> .....	55
	A. Revocation by Operation of Law .....	55
	B. Revocation of Permit — Failure to Pay Permit User Fee .....	59
	C. Suspension / Revocation of License or Permit (For Cause) .....	60
	D. Cancellation of License or Permit .....	63
	E. Voluntary Suspension of License or Permit .....	64
	F. Disposition of License or Permit .....	65
<b>Chapter 9</b>	<b>Termination of Brokerage Business and/or Bankruptcy</b> .....	67
	A. Termination of Brokerage Business .....	67
	B. Bankruptcy Proceedings .....	67
<b>Chapter 10</b>	<b>Automation</b> .....	73
	A. Automated Commercial System (ACS) .....	73
	B. Port Activity Tracking System (PATS) .....	75
<b>Chapter 11</b>	<b>Self-Inspection</b> .....	77
<b>Chapter 12</b>	<b>Risk Management in the Broker Environment</b> .....	81
	A. General Principles of Risk Management .....	81
	B. Risk Management and Broker Compliance .....	82
<b>Chapter 13</b>	<b>Broker Oversight</b> .....	85
	A. Broker Reporting Requirements .....	85
	B. Broker Reviews and Broker Compliance Reviews .....	87
	C. Review of Employee List Submissions .....	99
	D. Powers of Attorney .....	101
	E. Broker Compliance and Regulatory Audit .....	103
<b>Chapter 14</b>	<b>Broker Informed Compliance</b> .....	107
	A. Standard Informed Compliance for Brokers .....	107
	B. Customs Brokers 101 .....	108
<b>Chapter 15</b>	<b>Broker Penalties</b> .....	111
	A. Informed Compliance/Non-Egregious Violations .....	111
	B. Egregious Violations .....	112
	C. Penalties Issued Under 19 U.S.C. 1641 .....	114

<b>Chapter 16 Managing Broker Accounts (Prototype)</b> .....	117
A. Account Management .....	117
B. Steps to Broker Account Management.....	119
C. Broker Profiles .....	119
D. Compliance Rate and Indicators .....	121
E. Information Sharing .....	124
F. Action Plans .....	125
G. Monitor Account and Measure Progress .....	126
H. Account Maintenance.....	126
I. Benefits of Broker Account Management .....	126
J. Case Study — Selecting & Managing a Broker Account .....	126

### List of Appendices

Appendix 3-1	Application for Customs Broker License Exam (CF 3124E) .....	131
Appendix 3-2	Sample Passing Letter from HQ.....	132
Appendix 3-3	Sample Failing Letter from HQ .....	133
Appendix 3-4	Sample Collection of Examination Fee (CF 368) .....	134
Appendix 3-5	Sample Letter of Congratulations from Port Director .....	135
Appendix 3-6	Sample Letter of Denial of FOIA Request.....	136
Appendix 3-7	Sample ADA Letter to Exam Applicant.....	137
Appendix 4-1a	Application for Customs Broker License (CF 3124 - Front) .....	138
Appendix 4-1b	Application for Customs Broker License (CF 3124 - Back) .....	139
Appendix 4-2	FBI Fingerprint Card (FD 258) .....	140
Appendix 4-3	Sample Collection of License & Fingerprinting Fees (CF 368) ....	141
Appendix 4-4	Sample Posting Notice (Corporation/Partnership/Association) ....	142
Appendix 4-5	Sample Posting Notice (Individual) .....	143
Appendix 4-6	Sample Memorandum to OI.....	144
Appendix 4-7	Sample Memorandum to HQ BMB (No Derogatory Info — Individual) .....	145
Appendix 4-8	Sample Memorandum to HQ BMB (No Derogatory Info — Corporation/Partnership/Association) ....	146
Appendix 4-9	Sample Memorandum to HQ BMB (Derogatory Info — Individual) .....	147
Appendix 4-10	Sample Memorandum to HQ BMB (Derogatory Info — Corporation/Partnership/Association) .....	148

Appendix 4-11	Customs Broker License (CF 3131) . . . . .	149
Appendix 4-12	Customs Identification Card (CF 3143) . . . . .	150
Appendix 5-1	Local Permit (CF 342) . . . . .	151
Appendix 5-2	Sample Collection of Local Permit Fees (CF 368) . . . . .	152
Appendix 5-3	HQ Ruling 225011 . . . . .	153
Appendix 5-4	HQ Ruling 222573 . . . . .	156
Appendix 5-5	National Permit (CF 342A) . . . . .	160
Appendix 5-6	Sample Collection of National Permit Fees (CF 368) . . . . .	161
Appendix 6-1	HQ Ruling 225071 . . . . .	162
Appendix 7-1	Sample Courtesy Notice (Triennial Report) . . . . .	165
Appendix 7-2	Triennial Status Report (Individual) . . . . .	167
Appendix 7-3	Triennial Status Report (Corporation/Partnership/Association) . . . . .	168
Appendix 7-4	Sample Collection of Triennial Status Report Fee (CF 368) . . . . .	169
Appendix 7-5	Sample 60 Day Suspension Notice . . . . .	170
Appendix 8-1	Sample Letter (Corporation — Loss of License Qualifier) . . . . .	171
Appendix 8-2	Sample Letter (Partnership — Loss of License Qualifier) . . . . .	172
Appendix 8-3	Sample Letter (Association — Loss of License Qualifier) . . . . .	173
Appendix 8-4	Sample Letter (Notice of Local Permit Revocation) . . . . .	174
Appendix 8-5	Sample Letter (Notice of National Permit Revocation) . . . . .	175
Appendix 8-6	Sample Letter (Loss of Permit Qualifier) . . . . .	176
Appendix 10-1	ACS Function Codes . . . . .	177
Appendix 13-1	The Contents of a Broker Management File . . . . .	178
Appendix 13-2	Sample Letter to Broker (Request for Release Form) . . . . .	179
Appendix 13-3	Sample Authorization for Release of Information . . . . .	180
Appendix 13-4	Sample Letter to Broker (Notification to Broker of Employment of Convicted Felon) . . . . .	181
Appendix 17-1	List of Collection Codes. . . . .	182
Appendix 17-2	List of Headquarters Rulings (Including Replies to Requests for Internal Advice) . . . . .	183

## INTRODUCTION

**(From “What Every Member of the Trade Community Should Know About: Customs Brokers,” a publication prepared by the Office of Regulations & Rulings)**

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the U.S. Customs Service. In almost all cases, the goods are required to be “entered,” that is, declared to the Customs Service, and are subject to detention and examination by Customs officers to insure compliance with all laws and regulations enforced or administered by the United States Customs Service.

When a formal “entry of merchandise” is made under the provisions of 19 U.S.C. §1484, the required documentation or information is required to be filed or electronically transmitted by the “importer of record.” Under the statute, the “importer of record” is either the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license as a Customs broker.

As part of the entry process, goods must be “classified” (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use “reasonable care” to “enter,” “classify” and “value” the goods and provide any other information necessary to enable the Customs Service to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met. These requirements can be complex. In order to assist importers in meeting their responsibilities, importers may employ experts within their organizations or seek advice or services from outside experts such as Customs brokers, attorneys who specialize in Customs matters or consultants. Of these outside experts, only Customs brokers may actually prepare and file entry documentation because the preparation and filing of entry documentation constitutes “customs business” which, by statute, may be performed on behalf of others only by a licensed Customs broker.

This publication explains the historical background which led to the current licensing and permit regime and discusses in detail the recently revised procedures to become a Customs broker, the duties and responsibilities of a Customs broker, and the procedures for disciplining a Customs broker.

Today’s Customs broker is a federally licensed, highly regulated professional who offers many services to the international trade community. However, as can be seen from the following historical discussion, this was not always the case.

### **A. Note on Spelling, Hyphenation, and Capitalization**

Over the years, the spelling and hyphenation of “customhouse” has varied. Government and trade publications and even statutes refer to “custom-house,” “customhouse,” or “Custom House.” The hyphenated form “custom-house” was preferred in the nineteenth

century, while the non-hyphenated form “customhouse” became popular in the twentieth century. The two word form was often found on signs and buildings. The variations “Customs House,” and “customhouse” were never officially sanctioned but nonetheless appear in some publications. In this publication, we generally use “customhouse” except in quoted material where the format appears as in the original material quoted.

In recent U. S. Customs Service publications, “Customs” is capitalized when referring to a Customs Officer, the Customs Service, or a specific building such as the New York Customhouse, but is usually not capitalized when referring to customs duties, customs bonds or customhouses in general. The practice has varied since 1789 and consistency is often missing. In this publication, the current practice is followed except in quoted material where the format appears as in the original material.

## **B. Historical Background**

Section 36 of the Act of March 2, 1799 provided that the owner(s) or consignee(s) or “in case of his, her, or their absence or sickness, his, her, or their known agent or factor, in his, her, or their names, shall make entry thereof....” According to Article 193 of the Customs Regulations of 1857,

The manifest intent of this clause was to compel the original consignee to enter the goods, and the whole object of the act would be defeated by allowing a mere stranger to make entry or take the oath prescribed on the entry.

By the mid 1850’s, a practice had arisen at many ports of having an importer or consignee endorse the bill of lading over to a tradesman variously called a “Custom-house broker” or “express agent” who then filed the entry documents. These brokers or agents were unregulated and made entry in their own names, rather than as an agent for the original consignee. This apparently led to many problems, including frauds on the revenue and Article 194 of the Customs Regulations of 1857 addressed the issue by stating:

The practice of allowing custom-house brokers, express agents, and other parties, not the owner or original consignees, to make entries of merchandise in their own names, on the production of bill of lading endorsed by the importer or consignee, is in contravention of the express provisions of law and the decisions of the courts, and will therefore be discontinued. Entry must, in all cases, be made by the owner or consignee, who alone is authorized, under our revenue system, to take the prescribed oath, give the requisite bond, and pay the duties; and in cases where, from either of the causes averted to in the act [absence or sickness], the owner or consignee may be unable to attend personally at the custom-house, s/he will be required to be represented by a duly constituted agent or attorney, whose power must be lodged with the collector, who will make entry and perform all the necessary acts in the owners name, giving bond for the due production of his oath.

Although the Customs laws and regulations continued to restrict the right to make entry until the late nineteenth century, the basically unregulated business of customhouse broker continued to grow as trade expanded. Experienced brokers knew their way around the customhouse and were familiar with the forms and legal requirements. With a properly

executed power of attorney, they could act as the importer's agent and file entries in the importer's name. The importer, of course, remained legally responsible, since the customhouse broker was an agent of the importer. Customhouse brokers were filling a void and providing a much needed service. Unfortunately, not every broker was honest, and several of the Treasury Decisions and Solicitor of the Treasury's opinions of the time addressed integrity concerns. As a result, the necessity of government licensing and regulation of the industry became apparent. There was also recognition that unregulated "agents" should not be permitted to transact customs business.

Section 23 of the Act of August 27, 1894 (28 Stat. Chap 349) provided:

"That the collector or chief officer of the customs at any port of entry or delivery shall issue a license to *any reputable and competent person desiring to transact business as a custom-house broker*. Such license shall be granted for a period of one year, and may be revoked for cause at any time by the Secretary of the Treasury. From and after the first day of August, eighteen hundred and ninety-four, *no person shall transact business as a custom-house broker without a license* granted in accordance with its provision; but this Act shall not be so construed as to prohibit any importer from transacting business at a custom-house pertaining to his own importations. (*emphasis added*)

These provisions continued until passage of the Act of June 10, 1910 (36 Stat. 464). The 1910 Act changed the standard from "any reputable and competent person" to "any person of good moral character." The Act of 1910 provided in part that:

"the collector or chief officer of the customs at any port of entry or delivery shall, upon application, issue to any person of good moral character, being a citizen of the United States *a license to transact business as a customhouse broker* in the collection district in which such license is issued, and on and after sixty days from the approval of this act *no person shall transact business as a customhouse broker without a license* granted in accordance with its provision, but this act shall not be so construed as to prohibit any person from transacting business at a customhouse pertaining to his own importations. (*emphasis added*)

By statute, the term "person" was defined to include persons, co-partnerships, associations, joint-stock associations and corporations. The 1910 Act also authorized the Secretary of the Treasury to prescribe regulations necessary or convenient for carrying the Act into effect. Broker regulations were originally promulgated as Treasury Decisions and later consolidated into the Customs Regulations. The regulations generally tracked the statute, but did require licensed brokers to submit employee lists, written authorizations for employees to act and required brokers "*to exercise such discipline as will insure proper conduct on the part of their employees in the transaction of customs business, and will be held strictly responsible for the acts of such employees.*"

The Act further provided the Secretary of the Treasury with the authority to revoke the license after notice and an administrative hearing on the record if charges were brought for "good and sufficient reasons" by the "collector or chief officer of customs." Provisions were made for judicial appeals to the local United States Circuit Court (later renamed District Court), which was to decide the appeal on the merits as disclosed by the record.

The decision of the Court was final and the case was to be remanded to the Secretary to take further action in accordance with the terms of the court's decree.

The statutory scheme established in the 1910 Act continued until enactment of the Tariff Act of 1930. The original section 641 of that Act gave the Secretary of the Treasury more control over the licensing function. In addition to a requirement of good moral character, the Secretary could require the showing "of such facts as s/he may deem advisable as to the qualifications of the applicant to render valuable service to importers and exporters." Two individually licensed officers or partners were required for the issuance of corporate, association and partnership licenses which were deemed revoked if sixty days passed without meeting such requirement. Detailed provisions for revocations and suspensions "based on good and sufficient reasons" and specific time periods for notices were set forth in the legislation. Appeals were to be heard by the United States Customs Court which was to decide the case on the merits as disclosed by the administrative record. A timely appeal served to stay the suspension or revocation. The implementing Customs Regulations of 1931 included provisions for requiring applicants to pass an oral or written examination to show their knowledge of the Customs laws, regulations and procedures.

Over the years, the statutes and regulations governing customhouse brokers were revised. Major changes occurred under the Anti-Smuggling Act of 1935, the Trade and Tariff Act of 1984, and Title VI (Customs Modernization) of the NAFTA Implementation Act in 1993.

The Anti-Smuggling Act of 1935 allowed the Secretary to revoke or suspend the license of a customhouse broker "shown to be incompetent, disreputable, or has refused to comply with the rules and regulations" governing customhouse brokers, or "who has with intent to defraud, in any manner willfully and knowingly deceived, misled, or threatened any importer, exporter, claimant, or client, or prospective importer, exporter, claimant, or client, by word, circular, letter or by advertisement." Appeals from the Secretary's decision were moved to the United States Court of Appeals which was required to accept the Secretary's findings of the facts (provided they were supported by substantial evidence), although the legislation included provisions allowing the court to remand the action to Customs for additional taking of evidence. Appeals to the Supreme Court were also authorized in the law. During the judicial appeals process, the Secretary's revocation or suspension order was stayed "unless specifically ordered by the court." In addition to authority to promulgate implementing regulations, the 1935 Act also specifically authorized the Secretary to prescribe regulations:

- to protect importers and the revenue of the United States,
- establishing record-keeping and accounting requirements,
- requiring inspection of brokers, their papers, documents and correspondence, and
- requiring the furnishing by brokers of "information relating to their business" to any duly accredited agent of the United States.

Except for references to collectors, these provisions remained substantially unchanged until the enactment of Public Law 95-410 in 1978 which established the requirement of

brokers filing triennial reports which indicated whether the licensed broker was actively engaged in business as a customhouse broker and the name and address at which customhouse business was being conducted. In 1980 the Court of International Trade was given jurisdiction over appeals from the Secretary.

A major revision of section 641 occurred in the Trade and Tariff Act of 1984. The main broker provisions of that Act were:

- a change in title from customhouse broker to customs broker,
- a definition of “customs business,”
- changing the requirement from a separate license in each district to a single national license and a permit for each district in which the broker conducts customs business provided that the district offices regularly employ a licensed broker to exercise responsible supervision and control over the district business (which requirement can be waived if there is a regularly employed licensed broker in the region and the company has sufficient procedures to exercise responsible supervision and control over the district business) and establishment of a 180 day period before a permit is revoked by operation of law when a licensed broker is no longer employed in the district (or region, as applicable),
- a listing of examination topics for individual applicants,
- allowing corporate, association or partnership applicants to have only one licensed officer or partner (rather than the previously required two) and extending the period from 60 days to 120 days before a license is revoked by operation of law when a licensed officer or partner is no longer employed,
- establishment of a monetary penalty of up to \$10,000 for each transaction of customs business by an unlicensed person,
- detailed procedures and reasons for disciplinary proceedings against brokers,
- establishment of a monetary penalty not to exceed \$30,000 for a violation or violations of section 641, and procedures for: notice prior to assessment; for assessment; and remission or mitigation such penalties,
- requirements for an administrative law judge to preside over suspension or revocation hearings and detailed hearing procedures,
- authority to use a monetary penalty of up to \$30,000 in lieu of suspension or revocation and the ability to settle and compromise disciplinary proceedings,
- establishment of a statute of limitations requiring the notice of charges to be served within 5 years from the date the alleged violation was committed (or 5 years discovery if fraud was alleged),
- establishment of detailed judicial appeals procedures in the Court of International Trade with time limits after which the Court would lack jurisdiction;

- expanded authority for the Secretary to promulgate regulations governing brokers, but limited to their customs business,
- continuation of triennial reporting with provisions suspending licenses for failure to timely file and allowing the revocation without prejudice, after notice, of licenses if the reports are not filed within a 60 day period,
- authority for the Secretary to prescribe reasonable fees and charges (including but not limited to licensing and examination) to defray Customs Service expenses in carrying out the provisions of section 641.

### **C. Summary of the Current Statutory Requirements**

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person must hold a valid customs broker's license and permit in order to transact customs business on behalf of others. It sets forth standards for the issuance of broker's licenses and permits, provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties, and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

The regulations issued under the authority of section 641 are set forth in Part 111 of the Customs Regulations (19 CFR Part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Part 111 also prescribes recordkeeping and other duties and responsibilities of brokers, sets forth in detail the grounds and procedures for the revocation or suspension of broker licenses and permits and for the assessment of monetary penalties, and sets forth fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

On December 8, 1993, amendments to certain customs and navigation laws became effective as the result of enactment of the North American Free Trade Agreement Implementation Act, Public Law 103-182, 107 Stat. 2057. Title VI of the Act set forth Customs Modernization provisions ("the Mod Act") that included, in section 648, certain amendments to section 641 of the Tariff Act of 1930. The substantive amendments to section 641 were as follows:

- the definition of "customs business" was amended to include "the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of [the customs business activities already listed], whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs,"

- inclusion of a provision for the issuance of a national permit for the conduct of such customs business as the Secretary of the Treasury prescribes by regulation,
- a new subsection was added to provide that when electronic filing (including remote location filing) of entry information with Customs at any location is implemented by the Secretary of the Treasury pursuant to the provisions of the National Customs Automation Program (codified at 19 U.S.C. 1411-1414), a licensed broker may appoint another licensed broker who holds a permit in a Customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted to be filed electronically. That subsection also provides that the broker who appoints a subagent remains liable for all obligations arising under bond and for all duties, taxes and fees, and for any other liabilities imposed by law, and cannot delegate such liability to the subagent.
- the procedures for the suspension or revocation of a broker's license or permit, were amended to increase to 30 days the period within which a hearing is to be held after written notice of a hearing is provided to the broker.
- a provision was added which states that the Secretary of the Treasury may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business,
- provisions were added which allow all data required to be retained by a customs broker to be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium; and which permit, pursuant to regulations, the conversion of data to such storage medium at any time subsequent to the relevant customs transaction and permitting the data to be retained in a centralized basis according to such broker's business system.

#### **D. Effect of Customs Reorganization on Brokers**

On September 27, 1995, Customs published the following documents in the *Federal Register* as a result of changes in the Customs Headquarters and field organizational structure:

- T.D. 95-77 (60 FR 50008) amended the Customs Regulations on an interim basis. The amendments included extensive changes to the basic Customs field organization, involving the elimination of regions and districts for most purposes so that ports of entry would constitute the foundation of the Customs field structure and would be empowered with most of the functions and authority that had been held in the district and regional offices and also involving the designation of some ports as service ports having a full range of cargo processing functions, including inspection, entry, collection, and verification. The background portion of T.D. 95-77 pointed out that districts and regions would still exist as geographical descriptions for limited purposes such as for broker permits and certain cartage and lighterage purposes, and T.D. 95-77 therefore set forth certain additional regulatory changes in order to reflect this fact; these changes included the addition

of definitions for “district,” “district director” and “region” in § 111.1 (19 CFR 111.1) to enable the current statutory broker licensing and permitting schemes to operate.

- T.D. 95-78 (60 FR 50020) also amended the Customs Regulations on an interim basis and involved nomenclature changes. The T.D. 95-78 changes, in most cases, involved the replacement of outdated references with new references to reflect the new Customs Headquarters and field organizational structure. The majority of these changes involved replacing “district” with “port” and replacing “district director” with “port director,” or some variation thereof. The T.D. 95-78 changes involved almost every part within the Customs Regulations (19 CFR Chapter I) and included a large number of changes to Part 111.
- A general notice (60 FR 49971) informed the public of the geographic areas covered for purposes of Customs broker permits and for certain cartage and lighterage purposes where the word “district” appears in the Customs Regulations.

Based on a review of the changes to section 641 made by the Mod Act, Customs determined that the Part 111 regulatory texts should be amended as follows:

- to reflect the change to the definition of “customs business;”
- to provide for the issuance of national permits;
- to reflect the 30-day period within which a suspension or revocation hearing is to be held;
- to implement the proscription against prohibiting a broker from limiting its liability to other persons; and
- to reflect the amended recordkeeping provisions.

With regard to the appointment of subagents as authorized under amended section 641(c)(4), Customs determined that it would be premature to amend Part 111 at this time. Customs concluded that it would be preferable to address this issue at such time as related NCAP test procedures have been concluded, appropriate programming enhancements have become operational, and appropriate regulatory proposals have been formulated.

Customs also performed a general review of Part 111 to determine whether other regulatory changes should be made. Based on that review, Customs identified a number of other areas where significant improvement could be made to the existing regulatory texts. These improvements included:

- the elimination of obsolete or otherwise unnecessary provisions;
- the addition of new provisions where the regulations appeared to be incomplete or were otherwise in need of clarification;
- further textual changes arising out of the reorganization of Customs that were not fully addressed in the district/port terminology changes made by T.D. 95-77 and T.D. 95-78, including some changes to those previously-published changes and

particularly in order to clarify certain procedural aspects of the regulations (for example, where to file permit applications and broker status reports and where to pay permit user fees); and

- a large number of non-substantive, editorial changes to improve the precision and clarity of the regulations, ranging from the reorganization or complete redrafting of existing texts to minor word changes within a particular regulatory provision.

Based on the above considerations, on April 27, 1999, Customs published in the *Federal Register* (64 FR 22726) a notice of proposed rulemaking setting forth a complete revision of Part 111. The notice of proposed rulemaking included a detailed section-by-section discussion of the proposed amendments (other than those of a minor wording or other editorial nature) and provided a 60-day period for the submission of public comments on the proposed changes. On June 29, 1999, a notice was published in the *Federal Register* (64 FR 34748) to extend the public comment period to July 28, 1999. After reviewing all the comments and making any necessary changes, the final regulations were published in the *Federal Register* on March 15, 2000 (65 FR 13880), are effective April 14, 2000.

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## WHAT IS A CUSTOMS BROKER?

### A. Customs Broker Defined

The statutory authority for the licensing of Customs brokers by the Secretary of the Treasury is found in section 641, Tariff Act of 1930, as amended (19 U.S.C. § 1641, as amended). Rules and regulations related to the licensing of Customs brokers are set forth in Part 111 of the Customs Regulations (19 CFR Part 111). Licenses are issued to persons (i.e., individuals, corporations, partnerships and associations) to conduct “customs business” on behalf of other persons. (Refer to Chapter 4)

The Customs broker is a highly knowledgeable professional. Customs brokers must possess thorough knowledge of tariff schedules and Customs Regulations and must also keep abreast of the amendments made through constant changes in law and administrative regulations. The Customs broker must be well versed in determining proper classifications and dutiable value and be fully aware of the vast number of commodities subject to quota and other admissibility requirements. The Customs broker’s base of knowledge must also encompass the requirements of more than 40 governmental agencies, such as the U.S. Department of Agriculture on meat import questions, the Environmental Protection Agency (EPA) on vehicle emission standards or the Food and Drug Administration on product safety.

Once licensed, Parts 111 and 171 App. C of the Customs Regulations prescribe the duties and responsibilities of brokers, and the grounds and procedures for disciplining brokers, which may include the assessment of monetary penalties, and the revocation or suspension of licenses for violations of 19 USC 1641(d)(1)(A) through (F).

(19 USC 1641 & 19 CFR 111.1)

### B. License Required

#### 1. “Customs Business” Defined

No person may conduct “customs business” (other than solely on behalf of that person) unless that person holds a valid Customs broker license.

“Customs business” is defined as those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on merchandise by reasons of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. “Customs business” also includes the preparation, and activities relating to the preparation of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with Customs in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However “customs business” does not include the mere electronic transmission of data received for transmission to Customs.

Any person who conducts “customs business” for another person without a license is subject to monetary penalties pursuant to 19 USC 1641(b)(6).

(19 USC 1641 & 19 CFR 111.1)

### **C. License not Required**

#### 1. Transactions For Which A License Is *Not* Required:

- ✓ An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

- ✓ An employee of a Customs broker acting solely for his employer, is not required to be licensed where:

The broker has authorized the employee to sign documents pertaining to customs business on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the port director, but must provide proof of its existence to Customs upon request; or

The broker has authorized the employee to conduct other customs business on his behalf and has filed with the port director a statement identifying the employee as authorized to transact customs business on his behalf. However, no statement will be necessary when the broker is transacting customs business under an exception to the district permit rule. The broker must promptly notify the port director if authority granted to an employee is withdrawn. The withdrawal of authority will be effective upon receipt by the port director.

However, the broker must exercise sufficient supervision of the employee to ensure proper conduct on the part of the employee in the transaction of customs business, and will be held strictly responsible for the acts or omissions of the employee within the scope of his employment and for any other acts or omissions of the employee which, through the exercise of reasonable care and diligence, the broker should have foreseen.

- ✓ A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws.
- ✓ A carrier may file vessel entries and in-bond entries for transportation of merchandise.
- ✓ An unlicensed individual may enter a noncommercial shipment for another party provided that the requirements of 19 CFR 141.33 are met.
- ✓ A foreign trade zone operator or user may enter merchandise into a zone and engage in activities within a zone that do not involve the transfer of merchandise to the Customs territory of the United States.

(19 CFR 111.2(a)(2))

## **D. Becoming an Individually Licensed Customs Broker**

The following are the requirements that must be met by anyone applying to become an individually licensed Customs broker:

- ✓ Achieve a passing score on the Broker License Exam
- ✓ Be a United States citizen
- ✓ Be 21 years of age
- ✓ Establish good moral character and business integrity (Pass the background investigation)
- ✓ Pay the following fees:
  - \$200.00 Examination Fee
  - \$200.00 License Fee
  - \$20.70 fingerprint processing fee (subject to change)

To apply for a broker license, an applicant must first apply for and pass the broker license examination. Anyone, any age, from any country may take the examination. (Refer to Chapter 3)

The examination fee is payable at the time an individual submits an application to sit for the written examination. This fee is refundable if a timely written withdrawal notice is received by the port at least *two working days* prior to the test date. This fee is not refundable if the applicant fails to appear for the examination without providing the required withdrawal notice, fails to appear for the examination on time or fails to pass the examination.

After passing the examination, an individual applicant has 3 years from the date the passing notification is issued by Headquarters, to apply for a license. At the time of application, the individual must be at least 21 years of age, and a U.S. citizen. The application must be accompanied by the license fee and fingerprint processing fee.

(19 CFR 111.96(a), 111.13(b) & (d) & 111.12(a))

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## BROKER EXAMINATION PROCESS

### A. Purpose of the Examination

The purpose of the examination is to “determine the individual’s knowledge of Customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and exporters.”

(19 CFR 111.13(a))

### B. General Information

The Customs Broker Examination is an open-book, multiple-choice examination. A contracted party assists Customs in administering the examination. The passing score is 75%. The examination lasts 3½ to 4½ hours, depending on the number of questions. Examinees are responsible for monitoring their time and for pacing themselves accordingly. No one will be permitted to leave the examination room until all examinees at that particular location have completed the examination or until the allotted time expires.

Questions will generally be based on Title 19 of the Code of Federal Regulations and the Harmonized Tariff Schedule of the United States, Annotated (HTSUS). Applicants are apprised of the appropriate versions of the reference materials to be used on a particular exam in a Notice of Examination posted on the Customs website and in an instructional booklet provided by the Headquarters Broker Management Branch (HQ BMB) to field locations. However, Customs may ask questions about procedures not explicitly covered in these references. Examination topics typically include entry, classification, trade agreements, value, prohibited and restricted merchandise, drawback, intellectual property rights, and other subjects pertinent to a broker’s duties.

### C. Application for Examination

#### 1. Application for Customs Broker License Examination

Individuals applying to take the examination must complete an Application for Customs Broker License Exam (CF 3124E) (Appendix 3-1)

#### 2. Special Treatment of a Disability

**Standard Operating Procedures for examination applicants requesting special treatment of a disability in the course of examination procedures:**

- Box 4 of the application should indicate whether accommodation of a disability is requested.
- Each applicant requesting accommodation of a disability will be afforded an individualized, case-by-case assessment of the request.

- ❑ Upon receipt of an application, which seeks accommodation, the port must immediately call and fax a copy of the application to HQ BMB.
- ❑ The HQ BMB will immediately contact the applicant in writing to request that the following information be furnished to HQ BMB as soon as practicable, and the HQ BMB will immediately notify Chief Counsel that an accommodation in examination procedures has been requested. The HQ BMB should request of the applicant that responses to this information request be in writing to the extent practicable, and the applicant should be encouraged to transmit the information via facsimile or e-mail to expedite the review. (See Appendix 3-7)
  - ◆ Please describe the condition in detail, the duration of the condition, and the date of first diagnosis of the condition.
  - ◆ Provide physician's current diagnosis (less than one year old).
  - ◆ Please describe why applicant believes the condition would require accommodation in examination procedures and/or environment.
  - ◆ Please describe proposed modifications in the examination procedures and/or environment, which the applicant believes, would be reasonable and acceptable as an accommodation of the applicant's condition.
  - ◆ State whether the applicant has been provided similar accommodation(s) by another entity in a similar examination situation. If so, please describe.
- ❑ Upon receipt of the aforementioned information, the HQ BMB will consult with Chief Counsel regarding reasonableness of requested accommodation. Chief Counsel may initiate further discussions with the applicant as necessary or as requested by the HQ BMB. The final Chief Counsel recommendation to the HQ BMB regarding the accommodation request should be made within three business days of consultation.
- ❑ At least one week prior to the examination, the HQ BMB will inform the applicant and the contracted party, of Customs determination regarding accommodation.

### 3. Examination Dates

The broker examination is given twice a year; the first Monday in April and the first Monday in October. **The application must be received by the port director at least thirty (30) days prior to the examination date.** An application that is not received by the due date will be returned to the individual. Applications postmarked by the due date but received afterwards will be returned as untimely filed. The examinee must notify Customs of any changes in name and/or address at any time after submission of the application.

(19 CFR 111.13(b))

### 4. Examination Locations

There are various examination locations throughout the country. The application must be submitted to the port director where the examinee plans to take the examination. The contracted party will notify examinees in writing as to the time

and place of the examination no later than ten (10) days before the examination. This notification must be brought to the examination site. If the examinee does not receive a notice, they should contact the port where their application was submitted. A telephone number for the contracted party will be available to the port should a problem arise or if the information in the notice is incorrect. **No one will be admitted after the examination has begun.**

(19 CFR 111.13(b))

#### 5. Materials Needed for the Examination

All examinees are responsible for bringing to the examination the appropriate version of the Customs Regulations and the Harmonized Tariff Schedule of the United States. **This is essential.** Use of any editions other than those published in the Notice of Examination on the Customs website and in the instructional booklet is at the examinee's own risk since they may not be current. These reference materials can be obtained from the Government Printing Office. No other references are permitted during the examination. Annotations (notes, illustrations, etc.) will be permitted as long as they are not deemed excessive nor do they contain information that by itself would be considered an unauthorized reference. The final call rests with the test administrator. No additional pages can be added to either reference.

Each examinee must bring valid photo identification to the test site. (Valid identification is a federal or state issued identification.) A silent battery-operated calculator may be used during the examination. A #2 pencil(s) is also necessary.

#### 6. After the Examination

Scores will be reported to the applicant by mail within 45 days after the examination by HQ BMB. A copy of the examination booklet, answer key and scantron sheet will be provided to all passing and failing examinees at that time. The port director will provide passing examinees with instructions on how to apply for a license. (Appendix 3-5)

Examinees who fail the examination may submit a written appeal for review to the Assistant Commissioner, OFO (Refer to Part H of this chapter). Individuals may reapply and retake the examination. A new application with applicable fees will be required.

(19 CFR 111.13(e) & (f))

### **D. Headquarters Role in the Examination Process**

**The Broker Exam is given on the first Monday in April and October. It should be noted that the following time frames are to be used by HQ personnel as a guideline only for the preparation and review of the examination.**

**Before the end of December** — A group of eight (8) Customs subject matter experts (SMEs) meet to write the next year's two examinations plus alternate questions. This group should be regionally balanced between large and small ports. Copies of previous examinations will be provided to all participants. If a question is used from a previous

examination, the month and year the question was used will be recorded. They should also write a short statement explaining why their answer is the correct one, citing the applicable regulation and/or tariff provision. All questions and answers should be in Microsoft Word format and on disk upon returning to HQ. The security of the examination questions must be maintained at all times.

**February 1 (April exam) / August 1 (October exam)** — Send test instructions to field locations via CC-Mail. Upload announcement to Customs Electronic Bulletin Board (CEBB) and Internet. Formal instructions signed by the Executive Director, Trade Programs should be sent to the Assistant Port Directors. Ports are advised of deadline for applications (30 calendar days before the exam date) and given registration format (EXCEL). All instructions and announcements must be updated to reflect specific test requirements.

**By the end of January (April exam) / End of July (October exam)** — The questions to be used on the examination will be reviewed by the Office of Regulations & Rulings (OR & R). This is a one-day review and current Tariff Schedule and Regulations should be used to validate the questions.

**February 10 (April exam) / August 10 (October exam)** — The exam and answer key should be forwarded to the contracted party. The exam should be in exam format (Microsoft Word), and the answer key should cite the Regulations and/or Tariff Schedule.

**30 days before exam (April and October)** — All applications for examination must be received. Service ports (broker district) will have seven (7) additional calendar days from the application due date to forward the list (names, social security numbers, addresses and phone numbers) to HQ in prescribed format (EXCEL). Port directors do not have the authority to accept applications after the due date.

**By March 2 (October exam) / By September 5 (April exam)** — HQ BMB must respond and send pass/fail letters signed by the Assistant Commissioner, OFO to all examinees that appealed the exam. In the response, Customs should state why an appeal was denied. Make copies and send questions that require a substantial review to OR & R. Make copies of the pass/fail appeal letters; send one to port and file one at HQ.

**From March 2 through May 2 (October exam) / From September 5 through November 5 (April exam)** — Examinees denied an appeal by Customs have sixty (60) days to appeal to the Department of the Treasury. No examinees can appeal a question to Treasury if that question was not first appealed to Customs by that examinee. During this period, Customs should send to Treasury, the following:

- Appeal database
- Name of all appellants
- Questions appealed
- Questions granted
- Questions denied
- Reasons questions denied
- Questions voided before scores were sent out
- Original scores of appellants

Final scores of appellants  
Exam  
Answer key

**March 10 (April exam) / September 10 (October exam)** — Service ports must submit list of applicants taking the examination. HQ BMB will create an applicant database in Excel format.

**March 15 (April exam) / September 15 (October exam)** — HQ sends list of examinees for examination via internet to the contracted party. It should be in EXCEL format with each port listed separately.

**March 22 (April exam) / September 22 (October exam)** — The contracted party will send HQ BMB via electronic mail a complete roster of test locations. HQ BMB will send to the field a copy of the complete roster, test locations, and a list of contacts for the contracted party at test locations in case there are any errors.

**First Monday in April / First Monday in October** — Exam Day! Customs should be available for emergencies.

**April 10 (April exam) / October 9 (October exam)** — The contracted party will grade and run item analysis for problematic questions. HQ will review any voidable or faulty questions and decide whether all examinees should receive credit for those items. HQ will notify the contracted party of their decision within five (5) days. If questions are voided, then all examinees receive credit for that question. The contracted party will rescore the examination and forward the final results to HQ. (HQ should determine final policy on how examination is graded if a question is voided.)

**Between April 10 and May 5 (April exam) / Between October 9 and November 2 (October exam)** — A contracted party sends HQ BMB an examinee list with scores and addresses. Customs issues the pass/fail letters on letterhead, signed by the Assistant Commissioner, OFO.

**The week of May 5 (April exam) / Week of November 5 (October exam)** — The contracted party will mail to all examinees:

Pass/Fail Letters (Appendices 3-2 & 3-3)  
Copy of Exam  
Answer Key  
Copy of individual's scantron sheet

**May 5 (April exam) / November 2 (October exam)** — Post the examination and answer key on Customs website and send the results to ports in EXCEL or ACCESS format. Keep one copy for HQ records. Notify ports to send license application packets to the examinees that passed the examination. Examinees who failed have sixty (60) days from the date on their fail letter to appeal their results. They must appeal questions individually and in their own words. Customs does not accept appeals from attorneys or any other representative. Enter all appeals in the APPEAL database. Make folders for all appellants. Hold all appeals until the deadline has passed and answer all at the same time.



## **F. Returned Checks for Examination Fee**

If an examinee has a check returned, s/he will not be allowed to take the exam. The following steps will be taken:

- HQ will notify the port that a returned check was received from the examinee.
- Port personnel will notify the examinee telephonically that s/he will **not** be allowed to take the examination, and that certified funds will be required with future applications. Ports may notify the examinee in writing of this requirement.
- The examinee will not be allowed to take the examination even if all monies are reimbursed to Customs. Exceptions will be considered on a case-by-case basis. An example would be an event outside the control of the examinee, i.e. burglary, bank error, etc. However, HQ needs proof of such an event in order to consider whether or not the examinee may take the exam in such cases.
- If the examinee provides Customs with a timely notice of withdrawal (i.e., two working days prior to the examination), the bill created as a result of the returned check will be canceled. If no timely withdrawal is received from the examinee, s/he will be held responsible to reimburse Customs to fulfill his/her financial obligations.
- If an examinee takes the examination, and HQ discovers after the examination date that the check was returned, the examinee owes Customs \$200.00. HQ will notify the examinee and the port that his/her results will be declared null and void.
- An examinee whose check is returned will be required to tender certified funds with future applications for the examination.
- After the examination results are made public, port personnel will notify National Finance Center (NFC) of any timely withdrawal and request cancellation of the bill created by the returned check.

## **G. “No Shows” and Refunds**

### **1. Failure to Appear for Examination (No Shows)**

A prospective examinee must provide a written letter to the service port director at least two (2) working days prior to the date of a regularly scheduled examination that s/he will not appear for the examination.

Service ports will maintain records of timely applicant withdrawals for a three-year period. After the examination has taken place, the tests graded, and the scores forwarded to the service ports by HQ BMB, all refunds will be processed for the examinees who filed a timely withdrawal. The service port will verify the list of examinees, to ensure that the applicant did not sit for the examination and that a refund can be issued.

If any examination fees are to be refunded, a memorandum must be prepared by the service port director requesting such refund. The memorandum is to be directed to the NFC, Accounting Control & Adjustment Team, who will issue the refund. Only under extenuating circumstances, as determined by HQ BMB, will refunds be processed before the scores are forwarded to the ports.

In the case of a special written examination, no refund of the Examination Fee or additional reimbursement costs will be made. Nor will a refund be processed if a written notice of withdrawal is not provided by any applicant.

(19 CFR 111.13(d))

## **H. Examination Appeal Process**

### **1. General Information**

Customs will discard faulty questions discovered before the scores are posted. Faulty questions are those questions, which appeared to give a sufficient number of applicants difficulty in selecting the one correct answer. A joint review is performed by Customs and the contracted party to determine whether the question was poorly constructed or Customs designated an incorrect answer as the correct one. All examinees will receive credit for any faulty questions discarded before the examination is scored. Customs will give credit only to a particular appellant for questions that are appealed only if:

- ✓ The appellant files a timely appeal, and
- ✓ The appellant explains to the satisfaction of the Assistant Commissioner, OFO, or a designee why the question is faulty and why the appellant's examination answer is consistent with that explanation and why the appellant's answer should be credited.

For example, if the official answer is "A" and the appellant successfully argues that "B" should be credited, the appellant will receive credit only if his/her answer was "B," but not if s/he answered "C."

The appellant's score will be recalculated based on the total number of correct answers including those credited by appeal. The appellant will be deemed to have passed the examination if the recalculated score represents at least 75% of the total number of questions not discarded before the scores are posted.

If Customs renders a decision adverse to the appellant, a further appeal may be submitted to the Secretary of the Treasury. The Secretary will consider appeals of questions following the same aforementioned appeal procedures.

(19 CFR 111.13(f))

### **2. Appeal Request**

Examinees who fail the examination may submit a written request for review to the Assistant Commissioner, OFO. Appeals must be received within sixty (60) days of the date of the notice of examination results. Each question appealed shall include

any arguments as to why the question is invalid or why an alternate answer is the “best” answer. Arguments for each question should be appealed on a separate sheet of paper (DO NOT GROUP THEM). The appellant should place his/her name at the top of each sheet of paper. One copy of the test score notification letter and answer sheet should be submitted. Appeals should be sent to:

U.S. Customs Service  
Trade Programs/Room5.2C  
Broker Management Branch  
1300 Pennsylvania Avenue N.W.  
Washington, D.C. 20229

The HQ BMB will have sixty (60) days from the end of the appeal period to review timely appeals. Appeals may be directed to the writer of the question, OR & R, or any other subject matter expert for consideration. Before the end of the sixty (60) day review period, a decision letter will be generated to the appellant by HQ BMB.

If the appellant was unsuccessful in his/her appeal, s/he then has sixty (60) days from the date of the decision letter to appeal any denied questions to the Secretary of the Treasury. Only those questions first appealed to Customs may be appealed to Treasury. Questions not previously appealed to Customs may not be appealed to Treasury.

The appellant having appealed a question to both Customs and Treasury, and having been denied, may then take his/her appeal to the Court of International Trade.

(19 CFR 111.13(f))

## **I. Freedom of Information Act (FOIA) Requests**

The following information **MAY NOT** be made available to the public under any circumstances:

- A list of those people who applied to take the Customs Broker License Examination.
- A list of those people who took the Customs Broker License Examination.

Customs has decided not to release the aforementioned information as the decision to take an examination is a personal decision and disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. If any party requests the disclosure of this information under FOIA procedures or in any other format, the port director must transmit a letter denying the request to the requestor. (Appendix 3-6)

## **J. Federal Employees and the Examination**

Currently, federal employees may sit for the Customs Broker Examination but are prohibited from obtaining a broker license.

Guidance on this requirement was not standardized prior to 1981. In 1981, a legal determination clarified that federal employees were eligible to take the broker examination. If the federal employee passed the examination, the results would be

considered valid for up to five (5) years. Issuance of a license was withheld until federal employment was terminated. Should the individual continue in federal employment after the five-year period, the passing examination results would become invalid. For those who passed any examination up to and including the April 2000 examination, those results remain valid for the aforementioned five-year period.

Effective April 14, 2000, the Regulations were amended and policy in this area was codified. As a result, any federal employee who attains a passing score on the October 2, 2000 examination or any examination offered thereafter, must make application within three (3) years from the date of the passing notification **and terminate his/her federal employment** within the same three-year period in order to make application for a license. Otherwise, s/he will be required to successfully complete another broker examination before being allowed to make application for a license.

(19 CFR 111.11(a)(1) & 111.12(a))

#### **K. Special Written Examination**

If a partnership, association or corporation loses the required member or partner having an individual broker license and its license would be revoked by operation of law under the provisions of 19 U.S.C. 1641 (b)(5) before the next scheduled examination, HQ may authorize a special written examination for a prospective applicant for an individual license who would serve as the required member or officer.

A special written examination for an individual may also be authorized by Customs if a brokerage firm loses the individual broker who was exercising responsible supervision and control over an office in another district and the permit for that additional district would be revoked by operation of law under the provisions of 19 U.S.C. 1641 (c)(3) before the next scheduled examination. Customs may also authorize a special written examination for an individual for purposes of continuing the business of a sole proprietor.

A request for a special written examination must be submitted to the port director in writing and must describe the circumstances giving rise to the need for the examination. If the request is granted by HQ, the port director will notify the prospective examinee of the exact time and place of the examination. The examinee will be responsible for all additional costs incurred by Customs in preparing and administering the special examination that exceeded the \$200.00 Examination Fee and those additional costs must be reimbursed before the examination is given.

(19 CFR 111.13(c))

(19 CFR 111.11(b) & (c)(2))

(19 CFR 111.96(a))

(19 CFR 111.45(a))

(19 CFR 111.45(b))

## BROKER LICENSING PROCESS

### A. Application for Customs Broker License (CF 3124)

An application for a Customs broker license (individual, partnership, association, or corporation) must be submitted in **duplicate** to the service port director (broker district) where the applicant intends to do business. The application must be completed under oath and executed on an Application for Customs Broker License (CF 3124) (Appendices 4-1A & 4-1B). All applicants must complete blocks 1 through 6 of the application.

- If a fictitious name is being used, refer to Chapter 6 of this Handbook.
- If applying for an individual broker license, complete Sections I and III of the application.
- If applying for an association, corporation or partnership license, complete Section II and Section III of the application with appropriate attachments.
- The application must be accompanied by the \$200.00 License Fee.

(19 CFR 111.12(a) & 111.96(a))

#### 1. Individual License

An application for an individual license must be submitted within the three-year period after the applicant took and passed the written examination (i.e., 3 years from the date of the passing notice issued by HQ Broker Management Branch). The service port director will require an individual applicant to provide a copy of the passing notification issued by HQ which documents that the applicant passed the written examination and will require the applicant to submit fingerprints on a FD 258 (dated 12-29-82) (Appendix 4-2) at the time of filing the application. The applicant must also submit a recent (i.e., 3 months) credit report issued by a recognized credit reporting agency. The service port director may return an application as improperly filed, if the application demonstrates that one or more of the basic requirements of 19 CFR 111.11 have not been met. In such event, the application and fees will be returned to the applicant without further action.

An applicant must be a citizen of the United States and twenty-one (21) years of age prior to the date of submission of the application. An applicant in the process of becoming a citizen, who is not officially a citizen, is NOT eligible to apply for a license. Officers of the United States Government CANNOT apply to become a licensed Customs broker. Exceptions may be granted on a case by case basis (i.e., those who serve as reservists in the National Guard.)

(19 CFR 111.11(a)(1), (2) & (4), 19 CFR 111.12(a) & 111.13)

## 2. Partnership License

In order to qualify for a Customs broker license, a partnership must have at least one member of the partnership who is a licensed Customs broker. The Partnership Agreement must show this individual is a full partner with authority to bind the partnership. The agreement **MUST** state that the partnership is empowered to transact customs business as a Customs broker.

(19 CFR 111.11(b))

## 3. Association or Corporation License

In order to qualify for a Customs broker license, an association or corporation must have at least one officer of the association or corporation who is a licensed Customs broker. An association or corporation must be empowered under its Articles of Association or Articles of Incorporation to transact customs business as a Customs broker.

(19 CFR 111.11(c)(1) & (2))

# **B. Port Review of License Application**

## 1. Individual License Application

The service port must receive the following from an individual license applicant:

- The application (CF 3124) **in duplicate** with original legal signature.
- License and fingerprint fees.
- Recent credit report (not more than three months old).
- Copy of passing notification issued by HQ.

The service port must review the license application to determine whether the application can be accepted. The service port must:

- Ensure the application is signed and dated. It is recommended the application be date stamped to indicate the date received.
- Ensure the correct fees are tendered with the application, and that the check or money order is payable to U.S. Customs.
- Review the application to determine whether the applicant meets the age and citizenship requirements.
- Ensure the date of the passing notification submitted by the applicant is within three (3) years of the date of the application.
- Review the credit report to see if it is recent (i.e., dated within the last three months).

If these requirements have not been met, the application and fees will be returned to the applicant without further action.

(19 CFR 111.11 & 111.12)

## 2. Partnership License Application

The service port must receive the following from a Partnership license applicant:

- The application (CF 3124) **in duplicate** with original legal signature.
- License and fingerprint fees (for each partner), if needed (See Part C of this chapter).
- A copy of the Partnership Agreement or affidavit.
- A copy of the individual license that qualifies the partnership, if that individual license was not issued in the broker district where the application is filed.
- If applicant proposes to use a trade or fictitious name, a copy of the applicant's authority to use the name issued by the state where the application is filed.

The service port must review the license application to determine whether the Partnership license application can be accepted. The service port must:

- Ensure the application is signed and dated. It is recommended that the application be date stamped to indicate the date it is received.
- Ensure the correct fees are tendered with the application, and that the check or money order is payable to U.S. Customs.
- Review the application to ensure one member of the partnership is an individually licensed Customs broker.
- Ensure the qualifying licensee's license is valid.
- Ensure the Partnership Agreement or affidavit signed by all partners, required by Block 21 on the application, is included.
- Ensure the partnership is empowered under its agreement to transact customs business as a broker.
- If the applicant is using a trade or fictitious name, ensure evidence of the applicant's authority to use the name in the state is included.

If these requirements have not been met, the application and fees will be returned to the applicant without further action.

(19 CFR 111.11 & 111.12)



Fingerprint Fee \$20.70 — 060 Accounting Class code  
054 User Charge code

(19 CFR 111.96(a))

#### 5. Posting

Following acceptance of an application for a license, the service port director will post a notice that the application has been filed. The notice will be posted conspicuously in the Customhouse at the service port and at any other port within the same broker district where the applicant proposes to maintain an office. When available, the name and address of the applicant will be posted by appropriate electronic means. The notice will provide the name and address as stated in Block 1 of the CF 3124. If the applicant is a partnership, association, or corporation, the notice will state the names of all members or officers who are licensed as Customs brokers. The notice will invite written comment or information regarding the issuance of a license to the applicant. (Appendices 4-4 & 4-5)

(19 CFR 111.12)

#### 6. Withdrawal of Application

An Application for Customs Broker License may be withdrawn at any time prior to the issuance of the license by providing written notice of withdrawal to the service port director. **The \$200.00 License Fee is not refunded when an application has been withdrawn.**

(19 CFR 111.12(a) & (c))

### C. Fingerprinting

A person (individual, partnership, association or corporation) who files an application for a license must submit fingerprint cards (FD 258) (Appendix 4-2), and pay a fingerprint fee when these cards are submitted for analysis.

- An individual must submit two (2) fingerprint cards.
- A partnership must submit two (2) fingerprint cards for each partner listed on the CF 3124. If any of the partners have received their license within the two (2) year period preceding the date the application is filed, no fingerprint cards are required for that partner.
- An association or corporation must submit two fingerprint cards for all officers. If any of the officers have received their individual license within the two (2) year period preceding the date the application is filed, no fingerprint cards are required for that officer.
- The service port director will inform the applicant of the current fingerprint processing fee, which must be paid for each two fingerprint card set, before the application is transmitted for an investigation.

Fingerprinting may be done by local law enforcement officers, provided the proper fingerprint card is used and are presented prior to or at the time of submitting the application package to OI for the background investigation, unless other arrangements have been made. A receipt for the fingerprinting issued by the local law enforcement agency must accompany the cards to ensure the legitimacy of the prints when the applicant is fingerprinted by someone other than a Customs official.

(19 CFR 111.12 & 111.96)

#### **D. Referral to the Office of Investigation**

The service port will issue a memorandum referring an application for an individual, partnership, association or corporation license to the special agent in charge (SAIC) or resident agent in charge (RAIC) for an investigation and report. (Appendix 4-6)

The individual packet must consist of the following:

- Memorandum addressed to SAIC or RAIC. (Appendix 4-6)
- One copy of the application. (Appendix 4-1)
- One copy of the applicant's credit report.

The partnership packet must consist of the following:

- Memorandum addressed to SAIC or RAIC. (Appendix 4-6)
- One copy of the application. (Appendix 4-1)
- One copy of the Partnership Agreement or affidavit signed by all partners.

The association or corporation packet must consist of the following:

- Memorandum addressed to SAIC or RAIC. (Appendix 4-6)
- One copy of the application. (Appendix 4-1)
- One copy of the Articles of Incorporation or Articles of Association.

The investigation will ascertain facts relevant to the applicant's qualification and will cover, but need not be limited to:

- ✓ The accuracy of the statements made in the application.
- ✓ The business integrity of the applicant.
- ✓ When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant.

(19 CFR 111.14)

## **E. Background Express**

Background Express is a program designed to conduct background investigations (BI) for a broker license applicant by an outside contractor.

In 1996, a Customs/Broker group examined the process of broker licensing. In a 1997 report on improving customer service and cycle time, the group recommended improvement to the BI process.

In 1997, the Office of Investigations (OI) portion of the BI process was monitored for 105 broker license applications; the average time per BI case was 125 days. Since that time, OI's investigative workload has increased and priorities have shifted. Current BI cases can take 7 to 8 months, and in some locations, over a year. These delays are compounded by great variances in both depth and quality of the BI performed. An increasing amount of the BI work is being done telephonically or by investigative assistants. There is also a lack of standard items checked during the BI.

These delays cause considerable concern for both Customs and the brokerage industry. While the BI process drags on, the applicant has no license and cannot conduct customs business. This delay places many brokerages in smaller markets in jeopardy and increases overall cost for others. In response to this problem, the brokerage community has requested that Customs consider contracting out the BI functions on a "fee-for-service-basis," which has commonly been referred to as "Background Express."

While Background Express is only currently in the planning stages, it is expected that the program will allow a broker license applicant, for a pre-set fee, to have his BI conducted in an expedited manner. This expedited BI program would utilize contract investigators to perform background investigations of Customs broker license applicants. Customs and the Department of the Treasury are actively reviewing and hope the implementation of Background Express will occur in the near future.

## **F. Port Review and License Recommendation Process**

Once the SAIC or RAIC has completed the investigation, a Report of Investigation (ROI) will be prepared identifying the findings of the investigation. When the ROI has been received at the service port office, it is reviewed to determine whether there is derogatory information contained in the report. The license recommendation packet is prepared and sent to HQ Broker Management Branch (HQ BMB). The service port must ensure that all the elements of the recommendation packet are correct and complete.

(19 CFR 111.14)

### **1. No Derogatory Information**

The service port will send to HQ BMB the recommendation packet which must include the following:

- Service port director recommendation memorandum (Appendices 4-7 or 4-8)
- One original application (Appendix 4-1)

- One copy of the passing notification issued by HQ, if the license is an individual license.
- One copy of the ROI.
- Confirmation of the FBI fingerprint results, if not included in the ROI.
- Articles of Agreement or affidavit signed by all partners, if license is a partnership license.
- Articles of Association or Incorporation, if license is a corporation or association license.
- Copy(s) of the Collection Receipt(s) (CF 368) indicating payment of the license and fingerprint fees. (Appendix 4-3)

(19 CFR 111.14(c))

## 2. Derogatory Information

When derogatory information is identified in the ROI, the service port director must evaluate the information when contemplating a recommendation. The evaluation may include an in person interview with the applicant to assist the service port director in making the recommendation. The recommendation memorandum to HQ must include an explanation for the basis for the recommendation whether it be for approval or denial. Should the recommendation be for denial, the grounds for such denial must be included in the service port director's memorandum.

The service port will send to HQ BMB the recommendation packet which must include the following:

- Service port director recommendation memorandum. (Appendices 4-9 or 4-10)
- One original application. (Appendix 4-1)
- One copy of the passing notification issued by HQ, if the license is an individual license.
- One copy of the ROI.
- Confirmation of the FBI fingerprint analysis, if not included in the ROI.
- Articles of Agreement or affidavit signed by all partners, if the license is a partnership license.
- Articles of Association or Incorporation, if the license is a corporation or association license.
- Copy(s) of the Collection Receipt(s) indicating payment of the license and fingerprint fees. (Appendix 4-3)
- Copy of recent credit report submitted by applicant.

(19 CFR 111.16(b) & 111.14(c))

## **G. License Review at HQ**

HQ will review the license recommendation packet submitted by the service port. The packet must consist of the information noted in F.1 or F.2 of this chapter. If any of the information is missing, the packet will be returned to the service port for completion.

(19 CFR 111.14)

### **1. License Approved — No Derogatory Information**

If no derogatory information is indicated and the packet from the service port is in order, the applicant's name and other pertinent information is added to the HQ Broker Licensing Tracking System. A Customs Broker License (CF 3131) (Appendix 4-11) and Identification Card (CF 3143) (Appendix 4-12), for individuals only, are prepared. The license, i.d. card and service port recommendation packet are sent to the Assistant Commissioner, OFO for review and signature. When the license and i.d. card are signed, HQ BMB retains a photocopy of the license along with the service port recommendation packet. The HQ database is updated and the license and i.d. card are forwarded to the issuing service port for presentation to the newly licensed Customs broker.

(19 CFR 111.15)

### **2. License Approved — Derogatory Information**

If derogatory information is indicated and the packet from the service port is in order, a review and analysis will be made by HQ BMB staff to determine whether issuance of a license is appropriate or not. HQ will consider the following in their analysis:

- ✓ Recommendation from the service port director. (Appendices 4-9 or 4-10)
- ✓ Cause which would justify the revocation or suspension of the license of a broker under 19 CFR 111.53.
- ✓ Failure to meet any requirements of 19 CFR 111.11.
- ✓ Failure to establish the business integrity and good moral character of the applicant.
- ✓ Willful misstatement of pertinent facts in the application.
- ✓ Conduct which would be deemed unfair in commercial transactions by accepted standards.
- ✓ A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or record of that conduct.

Should the analysis determine the derogatory information is not grounds for denial of the application, the application is routed for license issuance as previously described in G.1 of this chapter.

(19 CFR 111.16)

### 3. License Denied — Derogatory Information

If derogatory information is indicated and the packet from the service port is in order, a review and analysis will be made by HQ to determine whether to issue a license as described in G.2 of this chapter. Should the analysis determine that there are grounds for denial of the license application, the application packet, as well as a synopsis of the issues are forwarded to the Assistant Commissioner, OFO for review. If the Assistant Commissioner, OFO agrees with the recommendation for denial, a notice of denial is sent to the applicant and service port director. The notice to the applicant, sent certified mail, “return receipt requested,” states the reasons why the license application is denied. The notice establishes the sixty (60) day period during which an applicant may file an appeal of the denial.

Should the Assistant Commissioner, OFO determine the derogatory information is not grounds for denial, the application is routed for license issuance as described in G.1 of this chapter.

(19 CFR 111.15 & 111.16)

## H. Appeal Process for Denial of License

The applicant may file with the Assistant Commissioner, OFO, a written appeal of the denial within the 60-day period. The appeal is reviewed by the HQ Broker Licensing Review Board (BLRB), to determine whether the information or arguments presented in the appeal support the denial or support approval of a license. If it is decided by the BLRB that a license will be issued based on the appeal, the applicant’s packet will be forwarded for license issuance. If it is decided to affirm the denial, the applicant and port director are notified in writing. This notice establishes the 60-day period during which an applicant may file an appeal with the Secretary of the Treasury.

(19 CFR 111.17)

### 1. Broker Licensing Review Board (BLRB)

The BLRB was established in June 2000 to impartially review and provide comment on cases where broker license applicants were denied a license by Customs. The BLRB reviews the applicant’s supplemental information, or hears an oral presentation from the applicant, and then renders a recommendation to the Assistant Commissioner, OFO. The Assistant Commissioner reviews the recommendation and, exercising the discretion afforded that office, may accept or reject the recommendation, or return it to the BLRB for further inquiry.

(19 CFR 111.17)

### 2. Procedures

- The HQ BMB receives an appeal from an applicant.
- The HQ BMB has the applicant’s file pulled from the branch files.

- ❑ The appeal is checked for timeliness. It must be received by the HQ BMB within sixty (60) days of the date of the denial letter.
- ❑ A HQ BMB staff member acts as a facilitator for the board.
- ❑ Thirty days prior to any meeting of the BLRB, the facilitator notifies the BLRB members that a case has arrived for review and arranges for a meeting place and time. The BLRB generally meets bimonthly.
- ❑ The BLRB is comprised of at least three representatives:
  - One from the Office of Field Operations (OFO)
  - One from the Office of Investigation (OI)
  - One from the Office of Strategic Trade (OST)
- ❑ The OFO representative may not be part of the OFO chain of command, but should be generally very familiar with trade and brokerage operations.
- ❑ The board facilitator ensures that all BLRB members have the appropriate materials (license application and supporting documentation) and sufficient time to review the case files before the scheduled BLRB meeting.
- ❑ When an individual license application is considered, items such as recent credit reports, explanations of derogatory credit information, dispositions of any arrest or an explanation of any arrest not reported on the application will be obtained in advance.
- ❑ When an application for an organization is considered and the denial is based on the individual's past record as a sole proprietor, documentation regarding the broker's current performance as an individual licensee should be obtained from the port where the broker is presently actively engaged in customs business as a licensed broker. The port should provide a synopsis of issues as they relate to the broker's **recent** performance (i.e., number of late files and no files, timely return of rejections, any penalties issued, any other liquidated damages issued, and copies of any recent RAD audit reports or broker compliance reports.
- ❑ The BLRB members are responsible for reviewing the appeals, the original application packets, background investigations, credit reports and all other pertinent documents before the scheduled meeting.
- ❑ Before the BLRB meeting, board members may share their concerns regarding specific cases with other BLRB members.
- ❑ On the day of the scheduled meeting, appellants are given the opportunity, if requested, to make a personal appeal to the BLRB members, whether in person or via telephone. The board facilitator will ensure that each appellant is permitted to make his/her appeal.

- ❑ After the conclusion of any personal appeal, BLRB members will be given the opportunity to ask questions of the appellant in order to seek clarification on specific issues related to any reason for which the license application was denied. BLRB members should refrain from compromising Customs final decision regarding the outcome (approval/denial) of the appeal.
- ❑ After a review, the BLRB members discuss the particulars of each appeal amongst themselves. Any recommendation for further inquiry must be a joint decision made by the BLRB members after the conclusion of the review of the appeal and personal contact with the applicant on the day of the meeting.
- ❑ After all discussion ends, the BLRB members vote on recommendations based on the information presented to them on that day.
- ❑ The HQ BMB staff member is responsible for preparing the decision letter for the signature of the Assistant Commissioner, OFO.

### **I. Port Presentation of Customs Broker License**

Once the Assistant Commissioner, OFO, has granted a license, the license will be forwarded to the service port director who will ensure recordation of pertinent license information into the Port Activity Tracking System (PATS) or the local port database, as appropriate. The service port director will ensure that the ROI and fingerprint card are destroyed. The service port director or his designated representative should deliver the license in person to the individual licensee or the licensed member of a corporation, partnership or association whenever possible. The service port will retain a photocopy of the license in the port broker management file.

## PERMITS

### A. Local Permits

A local permit is the official document that allows a licensed Customs broker to conduct customs business on behalf of others in a particular geographic area known as a broker district. An individual or an organization (corporation, partnership or association) must first obtain a Customs broker license before they receive a permit.

A permit request is submitted in a letter with the appropriate fees to the port director where the broker intends to conduct customs business. A local permit is issued on a CF 342 (Appendix 5-1). When a broker requests that a permit be issued concurrently with his/her broker's license, there is no \$100.00 Permit Fee for the first permit (as long as the permit is requested at or about the same time that the license is issued). The \$125.00 Permit User Fee must always be paid. A written request for a filer code should accompany each initial permit request. (Refer to Chapter 10 for guidance on filer code requests and establishing filer codes in ACS) The service port director (broker district) must be satisfied that the person intends to transact customs business within that broker district, and the person otherwise complies with the requirements of 19 CFR 111.19.

A permit is required when a broker has been issued a broker license and intends to conduct customs business in a particular broker district. If a broker intends to conduct customs business at a port within another broker district for which s/he does not have a permit, a broker must request a local permit at each broker district where s/he plans to conduct customs business. A local permit allows a broker to conduct customs business at all ports of entry covered by the larger area known as a broker district. For example, a broker who holds one local permit issued by the New York Broker District may conduct customs business at all ten ports of entry covered by the larger New York Broker District. Only **one** permit user fee is assessed for each local permit issued.

(CFR 111.2(b) & 111.19(b))

#### 1. Responsible Supervision and Control

A broker who requests a local permit must have a place of business at a port within the broker district where the request is submitted. Unless a waiver request has been approved, the applicant must employ in each broker district for which a permit is granted, at least one individually licensed broker to exercise responsible supervision and control over the customs business conducted in that broker district.

(19 CFR 111.19(d)(2))

#### 2. Local Permit Application Processing

If the broker indicates his/her intention to actively engage in customs business at a particular broker district, the service port director should ensure the following documentation is submitted before a permit is granted:

- A letter, which notes the broker's intent to conduct customs business in the local broker district, the applicant's broker license number and date of issuance and the name and license number of the individually licensed broker who will exercise responsible supervision and control in the broker district.  
(19 CFR 111.19(b)(1) & (4))
- A document, usually a business certificate, business license or its equivalent, which reserves the applicant's business name with the state or local government.  
(19 CFR 111.19(b)(4)).
- If the local permit applicant has previously been granted a Customs broker license, a copy of that license and most recent status report (19 CFR 111.30(d)) will be required. Copies of the license and most recent status report of the individually licensed broker named above will also be required when the permit applicant and individually licensed broker are not one and the same. Exceptions will be made for brokers licensed through the port of application.
- A lease or rental agreement for a place of business wherein the local permit applicant is named as tenant/lessee at the port of application.  
(19 CFR 111.19(d)(1))
- Notice of the place where the applicant's brokerage records will be retained and the name of the applicant's designated recordkeeping contact.  
(19 CFR 111.19(b)(6), 111.21 & 111.23).
- A list of the persons who will be employed in the broker district by the broker, together with all of the specific information prescribed in 19 CFR 111.28(b)(1).
- A list of all other districts for which the applicant has a local permit to conduct customs business.
- Permit User Fee of \$125.00 will be collected, regardless of the time of year the permit is issued.
- Permit Fee of \$100.00. However, the fee will be waived only when the permit is issued concurrently with the license.

(19 CFR 111.19(a) & 111.96(b)).

### 3. Collection of Local Permit Fees

The \$125.00 Local Permit User Fee and the \$100.00 Local Permit Fee must accompany a local permit application. The \$100.00 fee will be waived when the local permit is issued concurrently with the license. The broker's filer code must be established in the ACS district BFB file before any collection can be made. Local permit fees will be collected on a CF 368 (Appendix 5-2) as follows:

### CSRA Function

Local Permit Fee	\$100.00	— 060 Accounting Class code 038 User Charge code
Local Permit User Fee	\$125.00	— 497 Accounting Class code

The filer code is input into the reference field of the ACS CSRA screen. The two-digit suffix representing the year for which payment is made will follow the filer code in the reference field. A dash will separate the filer code and the year.

The Local Permit User Fee of \$125.00 is assessed for each permit held by an individual or company and is payable each calendar year. Each subsequent annual local permit user fee is due on or about January 20. (The due date is published annually in the Federal Register, at least sixty (60) days before the due date.)

Failure to pay the Local Permit User Fee may result in the permit being revoked by operation of law (Refer to Chapter 8).

(19 CFR 111.96 (b) & (c))

#### 4. Qualifying Licensed Individuals

A licensed Customs broker must employ, in each broker district for which a permit is granted, at least one licensed individual broker to exercise responsible supervision and control over the customs business conducted in the broker district.

A licensed broker may qualify more than one license. A licensed broker **may not** qualify more than one local permit, unless a waiver has been granted.

The status of any qualifying licensed individual may be verified at any time by contacting the port through which that individual's license was issued.

An individual who is the qualifying employee for the permit of one broker may not act as the qualifying employee for the permit of a second broker. A permit qualifier may be employed by a second broker as long as the work is performed at each broker's office during prescribed, non-concurrent hours, and the qualifying employee is under responsible supervision and control while working for the second broker.

An individual may qualify a license and a permit for his/her sole proprietorship and be employed by a second broker as long as the work is done at each broker's office during prescribed, non-concurrent hours and the licensed employee is under responsible supervision and control while working under the employ of the second broker.

(HQ Ruling 225011 & HQ Ruling 222573) (Appendices 5-3 and 5-4)  
(19 CFR 111.19(d))

#### 5. Waiver Request for Qualifying Licensed Individual

A waiver is a broker's authority granted by Customs to transact business under a local permit in a particular broker district without the benefit of a licensed employee located in that broker district.

A waiver request must be submitted in writing to the port director in the broker district in which the waiver is sought. A broker must address each of the following issues in his/her request to the satisfaction of Customs:

- ✓ The broker regularly employs at least one individually licensed broker in the region in which the broker district is located.
- ✓ Adequate procedures exist for the individually licensed broker to exercise responsible supervision and control over the customs business conducted in the district.
- ✓ Information as to the volume and type of customs business conducted, or planned to be conducted, in the broker district where the waiver is being sought.

The port director will review the request for a waiver and make a recommendation, which will be sent to the HQ Broker Management Branch (HQ BMB). HQ BMB will issue a written decision on the waiver, and, if the waiver is granted, the decision letter will specify the region and broker districts covered by the waiver.

A waiver request does not suspend the 180-day requirement (see Chapter 8) for employing a qualifying licensed individual at a particular broker district. Only an **approved** waiver request will cause the 180-day cycle to cease.

(19 CFR 111.19(d)(2))

## 6. Numbering the Permit

A local permit is issued on a CF 342. The format for numbering a local permit consists of the two (2) digit Customs Broker District Code, followed by the two (2) digit calendar year (year of permit issuance), and the broker's filer code. Dashes (-) should separate each distinct code, e.g. 12-01-ABC. The port director must ensure that blocks 1–7 of the local permit are completed before signature and issuance.

## 7. Port (Broker District) Action on Local Permit Application

The service port director will issue a local permit to a broker if s/he meets the following requirements:

- ✓ Submits a request meeting the requirements of 19 CFR 111.19(b);
- ✓ Pays the fees required by 19 CFR 111.19(c);
- ✓ Has a place of business and a designated individual who will provide responsible supervision and control over that place of business as required by 19 CFR 111.19(d).

When these requirements have been met, the local permit is to be issued. A local permit may be generated through PATS.

## 8. Local Permit Denial

If the port director is of the opinion that a local permit should not be issued, s/he will submit his/her written reason for that opinion to the HQ BMB for appropriate instructions on whether to grant or deny the local permit.

The Chief, HQ BMB, will advise the port director whether the reasons stated in his/her memorandum are sufficient to deny the local permit request. The port director will then transmit to the broker a letter of denial detailing the reason for the denial, if appropriate. If the reasons are found to be insufficient, a local permit will be issued if the broker meets the requirements specified in A.7 of this chapter.

## 9. Notification to Brokers

The Local Permit User Fee will be due on or about January 20<sup>th</sup> of each year. Sixty days prior to the due date, Customs HQ will publish in the Federal Register the due date for payment of the annual Local Permit User Fee. Following the publication of the notice in the Federal Register, port directors will transmit to all brokers with a valid local permit a reminder notice that the fee is due in whatever format they deem appropriate. Failure to pay the annual local user fee may result in revocation of the local permit by the port director (Refer to Chapter 8).

(19 CFR 111.96(c))

## 10. List of Permitted Brokers

The service port director will maintain and make available to the public an alphabetical list of Customs brokers permitted at his/her broker district. The Port Activity Tracking Systems (PATS) is capable of producing such a list (Refer to Chapter 10). A listing of permitted brokers is also available at the Customs Website.

(19 CFR 111.19(e))

# **B. National Permits**

## 1. General Information

On March 15, 2000, a Notice of Final Rule was published in the Federal Register which affects Customs brokers, 19 CFR Part 111. This rule was effective April 17, 2000, and made provisions for the issuance of national permits to Customs brokers.

A national permit is issued on a CF 342A. (See Appendix 5-5) The national permit allows a broker to provide employee implants, file electronic drawback claims, participate in the National Customs Automation Program (NCAP), and provides representation after entry summary, as outlined below:

- a. *Employee working in client's facility — (employee implant).* When a broker places an employee in the facility of a client for whom the broker is conducting business at one or more other locations covered by a district permit issued to the broker, and provided that the employee's activities are limited to customs business in support of that broker and on behalf of that client but does not involve the filing of entries or other documents with

Customs, the broker need *not obtain a local permit* in the broker district within which the client's facility is located.

- b. *Electronic drawback claims.* — A broker may file electronic drawback claims in accordance with the electronic filing procedures set forth in part 143, even though the broker does not have a local permit where the filing is made.
- c. *NCAP participation.* — A broker who is a participant in NCAP may electronically transact customs business that is provided for and operational under NCAP, even if the customs business is transacted within a district for which the broker does not have a local permit.
- d. *Post Entry Summary Representation* — Once an entry summary has been accepted by Customs, and except when a broker filed the entry as importer of record, a broker who did not file the entry, but who has been appointed by the importer of record, may orally or in person or in writing or electronically represent the importer of record before Customs on any issue arising out of that entry or concerning the merchandise covered by the entry even though the broker does not have a local permit where those representations are made, provided that, if requested by Customs, the broker submits appropriate evidence of his/her right to represent the client on the matter at issue.

(19 CFR 111.2(b)(2))

## 2. Qualifications

A broker who has a local permit may apply for a national permit for the purpose of transacting customs business. A broker must also have a licensed individual to exercise responsible supervision and control over the activities of the applicant conducted under the national permit. **A licensed individual may qualify a local permit and a national permit only!** A licensed individual cannot qualify two local permits, unless a waiver has been granted.

(19 CFR 111.19(f) and 111.2(b)(2)(i))

## 3. Collection of National Permit Fees

To apply for a national permit, the fees associated with obtaining a permit must be paid to the port through which the license was delivered before the application is forwarded to HQ BMB for review and approval. These fees are in addition to fees for a local permit. National permit fees will be collected on a CF 368 (Appendix 5-6) as follows:

### CSRA Function

Permit Fee	\$100.00 — 060 Accounting Class code 038 User Charge code
Permit User Fee	\$125.00 — 997 Accounting Class code

The filer code is input into the reference field of the ACS CSRA screen. The two-digit suffix representing the year for which payment is made is **NOT** to be used in conjunction with the filer code for national permit fee collections as it is with local permit user fee collections.

(19 CFR 111.96(b) & (c))

4. Port Responsibility

- Collect and issue receipt for national permit and user fees.
- Forward copies of subsequent receipts for national permit annual user fees to HQ BMB on the day following the due date for the payment of the user fee.
- Maintain a copy of receipt for broker compliance files.

5. Headquarters Responsibility

- Review and approve national permit application.
- Assign Permit Number; issue national permit and forward copy to responsible port.
- Update ACS — BFB screen.
- Notify OIT/ABI Client Rep Branch that a national permit has been issued.
- Issue notices of revocation when necessary.

6. Broker Responsibility

- Submit letter of application, including proof of payment (copy of CF 368) to HQ BMB.
- Provide the business address where they will conduct business under the national permit and telephone number.
- Submit the name and license number of the national permit qualifier.
- Notify HQ BMB of any changes to qualifying license holders and/or changes of address.
- Pay annual user fees timely.

7. Renewal Procedures

The National Permit User Fee will be due on or about January 20<sup>th</sup> of each year. Sixty days prior to the due date, HQ BMB personnel will publish in the Federal Register the due date for payment of the National Permit User Fee in conjunction with Local Permit User Fee. HQ BMB personnel will transmit a notice reminding all brokers who hold a valid national permit of the due date of the fee.

The National Permit User Fee must be submitted to the port through which the broker's license and national permit were issued by the due date each year. Failure to pay the National Permit User Fee may result in revocation of the national permit by the Assistant Commissioner, OFO (Refer to Chapter 8).

(19 CFR 111.96(c))

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## DBAs, NAME CHANGES, MERGERS & ACQUISITIONS

### A. Doing Business as (DBA)

#### 1. General Information

A licensed Customs broker, whether an individual, corporation, partnership or association, may operate under a fictitious name (also referred to as a trade, assumed or “DBA” (doing business as) name). A broker receives approval from the Assistant Commissioner, OFO, to conduct customs business under the proposed name.

Once approved, the broker must use the fictitious name at all times in a consistent manner in order to avoid confusion with other brokers with similar names. The broker may not choose to use the approved name for certain transactions and not use it for other transactions. Only one fictitious name may be used by the broker.

A broker may choose to use the approved fictitious name as the sole unique identifier of the brokerage business (i.e., “XYZ CUSTOMS BROKERS”) or may choose to use it in conjunction with the name as it appears on the Customs broker license (i.e., “JOHN DOE DBA XYZ CUSTOMS BROKERS”). The choice belongs to the broker; as long as the licensed name and approved fictitious name are used in an appropriate and consistent manner. However, the name in which the license is granted (i.e., as the name appears on the broker license) **MUST** appear in conjunction with the trade or fictitious name (i.e., “JOHN DOE DBA XYZ CUSTOMS BROKERS”) when signing Customs forms or documents that are or may be potentially presented to Customs (i.e., powers of attorney, surety bonds, CF 7501’s & CF 3461’s).

The Assistant Commissioner, OFO will not grant approval for the use of a fictitious name which gives the appearance of changing the business form of the license (i.e., individual, partnership, corporation or association) of the licensed entity. A broker conducting customs business as a sole proprietor will not be given approval to use an assumed name which includes the terms “Inc.,” “LLP” or “LLC.” No licensed Customs broker will be granted the approval to use a fictitious name which another broker has approval to use which is identical or confusingly similar.

#### 2. HQ Broker Management Branch Responsibilities

Before approval by the Assistant Commissioner, a broker must provide documentation of the authority to use a fictitious name issued by the state or local authority in the state where the broker intends to use the proposed DBA. Such requests are to be submitted directly to the HQ Broker Management Branch (HQ BMB) which will do the following:

- ❑ A HQ BMB staff member will review the request to verify that the documentation submitted constitutes the broker's authority to use the proposed DBA in the broker district(s) where s/he intends to conduct customs business as a broker. Consultation with the Broker Management Officer at the service port where the broker is proposing to use the DBA will take place to ensure the sufficiency of the documentation. No request will be approved if the proposed name includes wording which gives the appearance, or implies, a changing in the legal form of the license that was issued. Such requests will be returned to the licensee with a statement of the reason(s) for denial.
- ❑ If the documentation is sufficient, the HQ Broker Licensing Tracking System will be queried to ensure that no broker currently has approval to use an identical or confusingly similar DBA. If the Chief, HQ BMB, decides that the requested name is so similar to a name that is already in use and has been approved for another broker, the request at hand will be denied in a notice from the Assistant Commissioner, OFO, to the broker. If the broker that already has the approval of the DBA submits a written notice, on business letterhead relinquishing the use of the name, a second broker will be given approval to use the requested name. (Exceptions to simultaneous use of assumed names by more than one broker may be considered as long as the circumstances in the request at hand are similar to those laid out in HQ Ruling 224532 dated September 28, 1993.)
- ❑ If, after review, the documentation is deemed sufficient to support the broker's request, a HQ BMB staff member will provide the broker with written notice of approval signed by the Assistant Commissioner. The notice will state that the broker must affix the name in which the license was issued in conjunction with the approved fictitious name when signing Customs documents.
- ❑ A copy of the approval will be provided to the port director(s) affected by the approval. Approval will be noted in the "REMARKS" field of the broker's BFC file in ACS. The HQ Broker Licensing Tracking System is updated to reflect approval of the DBA.

### 3. Port Responsibilities

- ❑ Broker Management Officers should be familiar with the legal requirements and the documentation issued by the state or local authority in which the broker district is located, in order for a broker to use a proposed fictitious name.
- ❑ Any requests for approval submitted to a port office should be transmitted immediately to the HQ BMB in lieu of being returned to the broker.
- ❑ Upon receipt of a notice of approval to use a proposed fictitious name, BMOs should update the Port Activity Tracking Systems (PATS) or the local port database to reflect the approval for the broker to use the proposed DBA. The broker's ACS BFB file should be updated by BMOs so that the approved

DBA appears on the “ADDRESS1” line of this page. (i.e. “**DBA XXX BROKERS**”). Any local permit issued to the broker should also be updated to reflect the DBA approval. (Refer to Chapter 5 - PERMITS)

#### 4. Broker Responsibilities

- Submit appropriate documentation to the HQ BMB, which supports the right to operate under the proposed fictitious name.
- Conduct customs business only in the name and geographical areas authorized by the Assistant Commissioner.
- Upon approval of the DBA, if the broker has a bond on file, a bond rider adding the fictitious name in Section III of the bond and a CF 5106 to change the ACS SRE file, must be submitted to the port where the bond is filed.

(HQ Ruling 225071) (Appendix 6-1)

(19 CFR 111.30(c))

### **B. Name Changes**

Before using a new name to conduct customs business, the broker must submit evidence of the legal authority to do so. The request must be submitted directly to the HQ BMB for processing.

#### 1. Individuals

Individually licensed brokers who legally change their name must submit a written request to Customs that the name be changed on their Customs broker license so that it agrees with their new legal name. Copies of documents issued by the state or federal authority (i.e. marriage certificate, divorce decree or social security card) which document the individual’s right to use the new name, must be submitted to the HQ BMB. BMB personnel will record the new name in the HQ Broker Licensing Tacking System and reissue the license and i.d. card in the new name.

Once signed by the Assistant Commissioner, OFO, the new license will be forwarded by the HQ BMB to the director of the port that originally delivered the license to the licensee. Upon receipt from the HQ BMB, the BMO will update PATS or the local port database with the new name. Arrangements should be made for the surrender of the original license and i.d. card before the replacement license and i.d. card are delivered to the broker. If appropriate, the new name of the licensee will be recorded on the BFC file in ACS by a HQ BMB staff member. Any permits previously issued must be reissued to reflect the new name. Original permits must be surrendered before the reissued permits are delivered to the broker.

#### 2. Organizations

Organizations that legally change their name must submit a written request to Customs that the name be changed on their Customs broker license so that it agrees with their new legal name. Copies of documents, approved by the state in

which the organization was formed, must be submitted to the HQ BMB. If the documentation submitted provides sufficient evidence that the name change was properly administered and filed with the appropriate state authority, an HQ BMB staff member will record the new name in the HQ Broker Licensing Tracking System and reissue the license in the new name.

Once the new license is signed by the Assistant Commissioner, OFO, it will be forwarded to the director of the port that originally delivered the license to the licensee. Upon receipt from the HQ BMB, the BMO will update PATS or the local port database with the new name. Arrangements should be made for the surrender of the original license before the replacement license is delivered to the broker. If appropriate, the new name of the licensee will be recorded on the BFC file by a HQ BMB staff member. Any permits previously issued to the organization must be reissued to reflect the new name. Original permits must be surrendered before the reissued permits are delivered to the broker.

These requests should be scrutinized to determine if the requesting broker has effected more than a simple name change. If the name change has occurred as a result of a merger or acquisition, as described in Section C of this Chapter, the affected license may need to be canceled and a new license issued depending on the particulars of the transaction at hand.

When the broker has a bond on file, a bond rider to change the name of the principal on the bond and a CF 5106 to update the ACS SRE file, must be submitted to the port where the bond is on file, if applicable.

(19 CFR 111.30(c) & 111.51)

## **C. MERGERS & ACQUISITIONS**

### **1. Change in Legal Nature of an Organization**

Brokers are required to report to the director of each port through which it has been granted a permit, any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization. Examples of such transactions include (but are not limited to):

- Conversion of a general partnership to a limited partnership
- Merger with another organization.
- Conversion of a sole proprietorship to an organization (i.e., incorporation or LLP or LLC formation).
- Divestiture (transfer or sale) of a part of the organization.
- Entry into bankruptcy proceedings (Refer to Chapter 8).

The action required will vary depending on the type of organization resulting from the change. Port directors and BMOs can make that determination through

discussions with the principals and review of the purchase agreement, amendment to the Articles of Incorporation and any other documentation necessary to complete the transaction. Any questions as to the nature of the transaction and its affect on the license(s) at hand should be brought to the attention of the HQ BMB.

In general, if both companies continue to exist, except that one is now a wholly owned subsidiary of the other, and each licensed entity continues to conduct customs business, no action is usually required except to ensure that each licensed entity continues to meet the basic requirements for a license and permit.

If only one company remains, which basically resembles the original licensed entity with the same corporate structure, the broker may retain its license and permit(s). If only one of the companies remain, which does not resemble the original licensed entity and this company has undergone a change in corporate structure, the license and all associated permits must be canceled and the resulting firm must apply for a new license.

When a new corporation is created, a new bond and a new filer code is required. If applicable, a CF 5106 to update the ACS SRE file is also required. This is the only way in which Customs can designate responsibility for entries and maintain proper control of the filers. (Refer to Chapter 10.A)

When the former licensee ceases to exist, its bond should be terminated. For guidelines concerning powers of attorney, refer to Chapter 12.D of this handbook.

## 2. Change in Ownership

For purposes of this section, a “principal” means any person having at least a 5 percent capital, beneficiary or other indirect interest in the business of the broker.

In addition to reporting changes to the legal nature of an organization, brokers are required to report any change in the ownership of a licensee whose shares are not publicly traded, to the Assistant Commissioner, OFO, and the director of each port where a permit has been granted. When a change in ownership results in the addition of a new principal to a licensed organization, (irrespective of whether the shares are not publicly traded), Customs reserves the right to conduct a background investigation of the new principal. New principals already licensed as a Customs broker do not have to undergo a background investigation.

If the investigation of the new principal develops information, which may have been the basis for the denial of a broker license application, discussions between the port director and the Chief, Broker Management, should take place to determine whether the information constitutes grounds for requesting the removal of the new principal. If appropriate, the port director will notify the broker that the new principal is to be removed. If, after notice, the broker has not terminated the principal’s interest or otherwise satisfied the port director, suspension or revocation proceedings may be initiated against the firm’s license.

(19 CFR 111.28(c) & 111.30(b))

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## TRIENNIAL PROCESS

### A. Purpose and Definition

The triennial process consists of a status report and fee payment that must be submitted every three years by all licensed brokers, whether they are licensed as an individual, corporation, partnership or association.

- Each broker is required to file a status report with Customs on February 1, 1985 and on February 1 of each third year after that date. A report received during the month of February will be considered filed timely.
- A fee of \$100.00 shall accompany the report.
- The report **MUST** be filed with the port director in the broker district where the license was delivered.
- If the licensed broker fails to file the required report by March 1 of the reporting year, the license is suspended by operation of law on that date.

(19 CFR 111.30(d) & 111.96(d))

### B. Notification to Broker

Broker Management Officers shall send out a courtesy notice (See Appendix 7-1) to all brokers by December 1<sup>st</sup> of the year prior to the reporting year. Notification may be done in any of the following manners:

- Pipeline
- Bulletin Boards
- Internet
- Brokers Associations
- Individual Mailing
- Information Notice

### C. Reports Required

Broker Management Officers shall review and verify each status report (See recommended formats in Appendices 7-2 & 7-3) to make certain that all pertinent information is included. They shall also ensure that the appropriate fees are submitted. Status reports should include the following information. (Note – Not all of the following elements are required by the Customs Regulations. Elements required by the Regulations are highlighted).

- **Name**
- **If an individual, Employer's Name and Address**
- **Mailing address (non-business address if not actively engaged in customs business)**

- License Number and Issuance Date
- Port of license issuance
- Type of license
  - Individual
  - Corporation or Association
  - Partnership
- **Whether actively engaged in customs business or not**
- **If an individual, a statement that s/he has not engaged in any conduct that could constitute grounds for suspension or revocation of his/her license.**
- **A partnership, association or corporation must state the name under which it is operating as a broker, the business address, and the name and address of the licensed member(s) who qualifies the license. A licensed member or officer must sign the report.**
- **Updated list, setting forth the name, social security number, date and place of birth, and current home address of each current employee.**

If the status report and fees are forwarded to a port other than the port through which the license was issued, the receiving port should collect the fees after verification of the status of the license and forward the information to the issuing port. Failure to notify the issuing port of the collection will result in that port taking unnecessary action against the broker. Also, the port that received the triennial report must notify the broker where the report and fees should be filed in future triennial years.

If a broker license has been revoked, do not accept triennial fees. Return all monetary payments to the licensed broker with a letter of explanation.

Broker Management Officers are responsible for reviewing employee list submissions and forwarding the appropriate list(s) to the Broker Management Officer(s) at the affected service ports.

(19 CFR 111.28 (b)(1)(i), 111.30(d))

#### **D. Collection of Status Report Fee**

- Prepare Collection Receipt, CF 368 (Appendix 7-4) as follows:

##### **CSRA Function**

Status Report Fee \$100.00 — 060 Accounting Class code  
038 User Charge code

- If a corporation or association is also paying for several individually licensed brokers, their names and license numbers should be included in the body of the receipt.
- Maintain a copy of the collection receipt for the port broker management file.

- Check open debit voucher reports forwarded by National Finance Center. Treat any open debit vouchers as unpaid. (Refer to Section G of this Chapter).
- CLVL 4/Filer Code shows all debit vouchers for that filer code.

(19 CFR 111.96)

**E. Update Files**

- Add report information to PATS or local port database (new address, license number, phone number, etc.)
- Add report and copy of collection receipt to port broker management file.

**F. 60-Day Notice**

- Review port triennial lists to determine which brokers have not submitted a status report and fee.
- By March 31<sup>st</sup> of the reporting year, the 60-day written notice of suspension (Appendix 7-5) must be transmitted to the licensee via certified mail, “return receipt requested,” at the address reflected in Customs records.
- Maintain the return receipt card in the port broker management file as evidence of notification.
- If the licensed person files the required report within 60 days of the date of the suspension notice, the license shall be reinstated upon payment of the \$100.00 fee.
- Upon receipt of a status report and fee, complete “Reports Received,” “Collection of Fee” and “Update Files” steps identified above.

**G. Prepare Revocation List**

- If the licensed person does not file the required report and pay the associated fee within the 60-day period, the license shall be revoked on the 61<sup>st</sup> day without prejudice to the filing of an application for a new license.
- By June 15 the port should transmit to HQ via cc:Mail a list of brokers with assigned filer codes whose licenses have been revoked. The filer code should be suspended by HQ using the ACS function code “BFC.”
- No later than July 15, the database containing the status information shall be forwarded to HQ via cc:Mail. The database transmitted to HQ shall include the name of the broker, license number, date of license issuance, CF 368 receipt number and indication whether or not the \$100.00 fee was paid.
- HQ Broker Management Branch will assemble and review the triennial information transmitted from the ports. HQ will ensure that the revocation of the licenses of those brokers who failed to file the report and pay the fee is published in the Federal Register and the Customs Bulletin.

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## REVOCACTION/CANCELLATION/SUSPENSION OF LICENSE OR PERMIT

### A. Revocation by Operation of Law

#### 1. Revocation of License — Failure to File Status Report & Fee

Failure to file a status report and to pay the status report fee during the month of February of each third year, starting February 1, 1985, may result in revocation by operation of law of the broker license. The \$100.00 fee helps to defray the cost of administering the reporting requirements. The broker license is suspended by operation of law on March 1 of the reporting year when a licensed broker fails to file a status report and pay the fee.

The port director (broker district) that originally delivered the license to the broker is required to send a notice of suspension to the license holder by March 31<sup>st</sup> of the reporting year. The notice **must** be sent by certified mail, “return receipt requested.” If the broker files the status report with payment of the fee within 60 calendar days of the date of the suspension notice, the license will be reinstated. If no response is received during the 60-day time frame, HQ is notified and the broker’s license is revoked without prejudice to the filing of an application for a new license. Customs will publish a courtesy notice of revocation in the Customs Bulletin. (Refer to Chapter 7 for detailed procedures).

(19 CFR 111.30(d))

#### 2. Revocation of License — Failure to Employ License Qualifier

The failure of a broker who is licensed as a corporation, association, or partnership to have, for any continuous period of 120 days, at least one member of the partnership or at least one officer of the association or corporation who holds a valid individual broker license, will, in addition to any other sanction that may be imposed under Part 111, result in the revocation by operation of law of the license. The license and permits issued to the partnership, association, or corporation will be revoked on the 121<sup>st</sup> day.

A corporation, partnership or association must immediately provide written notice to the port director of each port through which it has been granted a permit of the date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of qualifying the organization’s license. Once the port director of the port where the license was originally delivered to that broker receives such notice, the port director will ensure that the following procedures are carried out:

- ❑ Establish the start date of the 120-day grace period and monitor the time period thereafter. Update the Port Activity Tracking Systems (PATS) or local port database to reflect the loss of the qualifying individual.

- ❑ Send a letter by certified mail, “return receipt requested” to the chief executive officer/managing partner of the brokerage reminding him/her of the company’s obligations in this area and note the date on which the license is due to be revoked by operation of law and the date on which the broker’s electronic cargo release privileges are to be suspended. The Broker Management Officer (BMO) should maintain copies of these notices in a separate file for self-inspection purposes. (See Appendices 8-1, 8-2 & 8-3)
- ❑ If the broker does not notify the port director that a replacement has been appointed when sixty (60) days prior to the end of the 120-day grace period occurs, the BMO is to immediately notify HQ Broker Management Branch (BMB) of the particulars of the loss the qualifying officer/partner in a memorandum. The written or electronic memorandum must include the name of the terminated individual, the date of his/her termination, the proposed date of the license revocation and the name, address and license number of the affected organization. At the same time, a copy of the letter sent certified mail referred to directly above should also be faxed to the BMB by the BMO. Upon receipt of the notification by the broker of the replacement of the qualifying individual, the BMO will immediately notify the BMB of the replacement individual.
- ❑ If the brokerage fails to notify the port director that a replacement has been appointed thirty (30) days prior to the end of the 120-day grace period occurs, the BMO is to contact the local Field Analytical Specialist (FAS) to arrange for the suspension of the broker’s electronic cargo release privileges ten business days before the end day of the 120-day grace period.
- ❑ The BMOs request to NASD through FAS for national criteria to suspend the broker’s electronic cargo release privileges must include the following information:
  - The name of the office, CMC, name, and telephone number of the BMO making the request.
  - The name and filer code of the subject broker.
  - Justification for the request. The justification should read as follows:
 

“(Insert broker’s name) Customs broker license is scheduled to be revoked on MM/DD/YYYY. We request that the broker’s electronic cargo release privileges be suspended on MM/DD/YYYY. “Live” entry/entry summary required (with monies attached - no ACH) until further notice. This request is being made to prevent the broker from filing any entries at any port for which a corresponding entry summary may be filed after the date of the revocation of the broker license.”
  - The stop date on which the selectivity criteria is to be removed (121<sup>st</sup> day of grace period).

- ❑ With the information supplied in the BMOs request, FAS will ask the National Analytical Specialist Division (NASD, New York) using the standard National Selectivity Criteria Request Form to input national selectivity criteria to suspend the broker’s electronic cargo release privileges on the specified date. Brokers who fall into this category, will be required to file “live” entry/entry paper summaries until a replacement is named or the license is revoked, whichever comes first.
- ❑ The BMO will immediately provide notice to the BMB of the suspension of the electronic cargo release privileges. Upon the appointment of a qualified licensed officer and subsequent notification to Customs anytime during the last ten days of the 120-day period, the BMO will immediately notify NASD via e-mail directly to the Supervisor, NASD or Director, NASD, so that the national selectivity criteria may be removed.
- ❑ If the BMO receives notification of the appointment of a replacement anytime during the grace period, the 120-day clock stops. If such notification is received before the aforementioned sixty-day date occurs, no notification to the BMB is necessary.

The BMB is responsible for ensuring that the following procedures are adhered to once it is notified of the loss of a qualifying member or officer:

- ❑ At least thirty **calendar** days before the date the revocation is set to occur, send the brokerage a **written** notice certified mail, “return receipt requested” informing the broker of the impending revocation.
- ❑ Notify all affected ports of the effective date of the suspension of electronic cargo release privileges, if appropriate.
- ❑ If license is revoked by operation of law, suspend broker filer code on the 121<sup>st</sup> day in ACS using function code BFCC.
- ❑ Prepare notices of revocation; one to be published in the Customs Bulletin and a second addressed to the Customs broker, if the broker fails to employ another licensed individual within the 120-day time period. The revocation notices should make note of the cancellation of the license and all associated permits.

The license of an individual broker, doing business as a sole proprietor, is not subject to the subject 120-day grace period. When an individual broker, operating as a sole proprietor dies, his/her brokerage operation ceases to exist as a legal entity for Customs purposes and his/her license and all permits issued thereunder, become void. The brokerage operation may no longer conduct customs business, even if it employs another licensed individual.

(19 CFR 111.45(a) & (c) & 19 CFR 111.30(b)(1))

### 3. Revocation of Permit — Failure to Employ Permit Qualifier

A licensee who has been granted a local permit must employ a licensed individual in the permitted district. If the broker fails to employ within that district at least one person who holds a valid individual broker's license, for any continuous period of 180 days, the failure will, in addition to any other sanction that may be imposed under Part 111, result in the revocation of the local permit by operation of law on the 181<sup>st</sup> day, unless a waiver has been granted.

Note — every individual acting as a sole proprietor and every corporation, partnership and association is required to provide written notice of the termination of any employee employed longer than thirty days, within thirty days of their termination, to the port director of the port where that person was employed. BMOs should review these termination notices to identify situations where Customs is being notified of the loss of a local permit qualifier. Upon receiving notice of the termination of the qualifying employee, the BMO will:

- ❑ Establish the start date of the 180-day grace period and monitor the time period thereafter. Update PATS or local port database to reflect the loss of the qualifying individual.
- ❑ Prepare and send a letter certified mail, “return receipt requested” to the broker reminding him/her of his/her obligations in this area and note the date on which the local permit is to be revoked and the date on which the brokerage's electronic cargo release privileges are to be suspended in the affected broker district. (See Appendix 8-6).
- ❑ If the broker notifies the BMO any time during the 180-day period that s/he has employed another licensed individual to exercise responsible supervision and control, the 180-day clock stops.
- ❑ Thirty (30) calendar days prior to the end of the 180-day grace period, if the broker fails to notify the port director of the replacement of the terminated qualifying individual, the BMO will send a request to the local Field Analytical Specialist (FAS) asking them to input local (port specific) selectivity criteria to suspend the broker's electronic cargo release privileges in the affected broker district ten business days before the end of the 180-day grace period. The BMOs request should specify the following information:
  - The name and filer code of the subject broker.
  - The date on which the privileges are to be suspended (ten business days before the end of the 180-day grace period.)
  - The date on which the subject local permit is to be revoked (181<sup>st</sup> day).
  - Criteria which will specify that, “The local permit of XXX Brokers is scheduled to be revoked by operation of law on MM/DD/YYYY. Electronic cargo release privileges have been suspended, “live” entry/entry summary required (with monies attached - **no ACH**) until further notice.”

- ❑ If the broker employs a qualified licensed individual any time during the last thirty (30) days of the 180-day period, the BMO will immediately notify the local FAS that local (port specific) filer selectivity criteria is to be removed upon notification to the port director.
- ❑ If the broker fails to notify the port director of the replacement of the terminated qualifying individual by the 180<sup>th</sup> day of the grace period, the permit is revoked by operation of law on the 181<sup>st</sup> day.
- ❑ The BMO will send a memorandum to HQ BMB informing that office of the revocation of the local permit. The HQ BMB will publish notice of the revocation in the Customs Bulletin and forward a notice to the broker informing him/her of the revocation of the local permit.
- ❑ If the permit is revoked by operation of law, the broker's filer code will be suspended in ACS by the BMO, using function code BFBR, for the broker district where the permit was revoked.

(19 CFR 111.45(b) & (c))

## **B. Revocation of Permit - Failure to Pay Permit User Fee**

### **1. Failure to Pay Local Permit User Fee**

A user fee is assessed on an annual basis for each local permit held by an individual, corporation, partnership or association. The HQ BMB publishes the due date for payment of the fee in the Federal Register at least sixty (60) days before the due date. A local reminder notice will also be issued by every port (broker district).

Failure to pay the annual Permit User Fee of \$125.00 for each local permit held by an individual, partnership, association or corporate broker may result in revocation of the local permit. (Refer to Chapter 5).

The BMO is responsible for ensuring that the following procedures are adhered to when a broker fails to pay this user fee in a timely manner:

- ❑ On the date the permit user fee is due, compile a list of all brokers who hold a valid local permit within that broker district on that date.
- ❑ On the day after the fee is due, compare the aforementioned list to a list of those brokers who paid the fee in a timely manner (or copies of CF 368's used to collect the fee).
- ❑ Identify the permits to be revoked for non-payment of the user fee.
- ❑ Prepare and transmit to the brokers whose permits are to be revoked, a letter informing them of the revocation of the permit. The letter, signed by the port director, should be sent by certified mail, "return receipt requested" by February 1<sup>st</sup> of the year the Permit User Fee is due. The letter constitutes notice of the revocation of the Local Permit. (See Appendix 8-4). Notice of revocation of the local permit in the Federal Register is NOT required in this instance.

- ❑ On the date the notice of revocation is sent to the broker, filer codes of the violating brokers should be suspended in ACS using the function code BFBR for the broker districts where the permits were revoked.

(19 CFR 111.96(c))

## 2. Failure to Pay National Permit User Fee

A user fee is assessed on an annual basis for each national permit held by an individual, corporation, partnership or association. The HQ BMB publishes the due date for payment of the fee in the Federal Register at least sixty (60) days before the due date. Failure to pay the National Permit User Fee of \$125.00 for a national permit held by an individual, partnership, association or corporation may result in revocation of the national permit. The following procedures will be implemented:

- ❑ On the day after the fee is due, all BMO's shall send to the HQ BMB copies of all CF 368's used to collect the current year national Permit User Fee.
- ❑ Upon receipt from the BMOs, the BMB will compile a list of those brokers who hold a valid national permit and failed to remit the associated user fee by the due date.
- ❑ A notice will be prepared, signed by the Assistant Commissioner, OFO, and sent certified mail, "return receipt requested" to the violating brokers notifying them of the revocation of the national permit. (See Appendix 8-5)
- ❑ BMB staff will ensure that the filer code is suspended in broker district "9900" in ACS using function code BFBR on the day the notice is issued.

## C Suspension / Revocation of License or Permit (For Cause)

### 1. Reasons for Suspension / Revocation

The appropriate Customs officer may initiate proceedings for the suspension of a license or permit for a specific period of time, or the revocation of a license or permit of any broker, for any of the following reasons:

- ✓ The broker has made or caused to be made on any application for any license or permit under 19 CFR 111, or report filed with Customs, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application or report any material fact which was required;
- ✓ The broker has been convicted, at any time after the filing of an application for a license, of any felony or misdemeanor which:
  - ❖ Involved the importation or exportation of merchandise
  - ❖ Arose out of the conduct of customs business
  - ❖ Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds

- ✓ The broker has violated any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs;
- ✓ The broker has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs;
- ✓ The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of that employment from the Assistant Commissioner, OFO;
- ✓ The broker has, in the course of customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client; or
- ✓ The broker no longer meets the applicable license or permit requirements of 19 CFR 111.11 and 111.19.

(19 CFR 111.53)

## 2. Procedures

- ❑ Investigation of Complaints — Any complaint or charge against a broker, which may result in disciplinary action, will be forwarded to the special agent in charge (SAIC), or the resident agent in charge (RAIC) so that an investigation may be performed and a report issued.
- ❑ Report of Investigation — The port director will review the Report of Investigation (ROI) and determine if there is sufficient basis to recommend charges against the broker. If, after consultation with Associate Chief Counsel, the port director wishes to recommend charges, the port director shall submit the recommendation with supporting reasons to the Assistant Commissioner, OFO, for final determination. The Assistant Commissioner, OFO, will decide if charges are to be preferred and notify the port director.
- ❑ Preliminary Proceeding — The port director will advise the broker in writing of the opportunity to participate in preliminary proceedings to avoid formal proceedings against his/her license or permit.
- ❑ Decision on Preliminary Proceedings — The port director will prepare and forward to the Assistant Commissioner, OFO, a summary of any oral presentations by the broker and his/her recommendation. If the Assistant Commissioner, OFO, is satisfied that no further proceedings are warranted, the port director will be notified and, will in turn, notify the broker. If no response is received from the broker and/or the Assistant Commissioner, OFO, decides further proceedings are warranted, the port director will be advised and instructed to prepare, sign and serve a notice and statement of charges.

- ❑ Notice of Hearing — After the notice and statement of charges have been served, the port director will provide the broker written notification of the time and place of the hearing. The hearing will take place within 30 days after service of the notice of hearing. The broker can request, in writing, a delay in the hearing for good cause. The hearing officer, an administrative law judge appointed pursuant to 5 U.S.C. 3105, may reschedule the hearing and will notify the broker of that fact. If the broker fails to appear for the scheduled hearing, the hearing officer will proceed with the hearing.
- ❑ Hearing — The broker or his/her attorney will have the right to examine all exhibits, to cross-examine witnesses and present witnesses. Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in customs matters. The other party to the hearing will be given reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, will be permitted to cross-examine any witnesses. The deposition will become a part of the hearing record. The port director will provide a competent reporter. The port director will provide a copy of the transcribed hearing to the hearing officer, the broker, and the government representative without charge.
- ❑ Proposed Findings — The hearing officer will allow the parties a reasonable period to submit proposed findings and conclusions as contemplated by 5 U.S.C. 557(c). After a review of the proposed findings and conclusions submitted by the parties, the hearing officer will make his/her recommended decision and certify the entire record to the Secretary of the Treasury. The Secretary of the Treasury will afford the parties a reasonable opportunity to make any additional submissions and will disregard any immaterial evidence. If the Secretary of the Treasury finds that a proper disposition cannot be made based on the evidence, s/he may instruct the port director to serve appropriate charges as a basis for new proceedings.
- ❑ Decision and Notice of Suspension or Revocation or Monetary Penalty — If the Secretary of the Treasury issues an order to suspend or revoke the broker's license or permit or assesses a monetary penalty in lieu thereof, the Assistant Commissioner OFO, will publish a notice in the Federal Register and in the Customs Bulletin. If no appeal to the order is filed, the suspension or revocation or penalty (including payment) will become effective 60 calendar days after the written notification of the order. An appeal of a revocation or suspension order may be filed by the broker in the Court of International Trade.
- ❑ Reopening the Case — The broker can request the case be reopened on the grounds that new evidence has been discovered or that important evidence was not available at the original hearing. The Assistant Commissioner, OFO, will forward the request to the Secretary of the Treasury for a decision. If granted, the Assistant Commissioner, OFO, will set a time and place for the hearing.

- ❑ Settlement and Compromise — The Assistant Commissioner, OFO, with the Secretary of the Treasury’s approval, may settle and compromise any disciplinary proceeding, which has been instituted.

(19 CFR 111.55 — 111.95)

#### **D. Cancellation of License or Permit**

##### **1. Cancellation of Broker License or Permit “Without Prejudice”**

The Assistant Commissioner, OFO, may cancel a broker license or permit “without prejudice” upon written application by the broker if the Assistant Commissioner determines the application was not made in order to avoid proceedings for the suspension or revocation of the license or permit. If the Assistant Commissioner, OFO, determines that the application for cancellation was made in order to avoid those proceedings, s/he may cancel the license or permit “without prejudice” only with the authorization from the Secretary of the Treasury.

Requests for cancellation of a license should be directed to the port director of the port through which the license was issued. Requests for cancellation of a local permit should be directed to the port director of the port where the permit was issued.

The port director must forward the broker’s written request for cancellation of a license or permit to the HQ BMB requesting that it be canceled. The port director should state whether s/he believes the license or local permit should be canceled “without prejudice.”

The returned physical license or local permit will be retained in the port broker management file. The HQ BMB will publish notice of cancellation of the license in the Federal Register. Upon publication in the Federal Register, the license should be marked “**CANCELED.**” HQ BMB personnel will suspend the corresponding filer code using ACS function code BFCC on the date the license is canceled, if appropriate. The BMO will suspend the corresponding filer code using ACS function code BFBR on the date the permit is canceled upon notification from HQ. A copy of the notice to the broker from the Assistant Commissioner acknowledging cancellation of the license or permit will be provided to the appropriate port director(s).

Requests for cancellation of a national permit should be submitted directly to HQ BMB. The original national permit document will be retained in the HQ BMB broker management file. Notice of cancellation of the national permit will be published in the Federal Register. HQ BMB personnel will suspend the corresponding filer code in ACS using function code BFBR in broker district “9900.”

(19 CFR 111.51(a))

##### **2. Cancellation of License or Permit “With Prejudice”**

The Assistant Commissioner, OFO may cancel a license or permit “with prejudice” when specifically requested to do so by the broker. The effect of a cancellation “with prejudice” is, in all respects, the same as if the license or permit had been revoked for cause by the Secretary of the Treasury, except that it does not allow for a right of appeal.

A request for cancellation of a license or permit “with prejudice” received by a port director must be forwarded to the HQ BMB for consideration. Action will be taken by the HQ BMB to ensure that a notice of cancellation “with prejudice” is published in the Federal Register.

HQ BMB personnel will suspend the filer code using the ACS function code BFCC of a broker whose license is canceled “with prejudice” on the date the license is canceled, if appropriate. The filer code of a broker whose permit is canceled “with prejudice” will be suspended by the BMO using the function code BFBR, located at the affected broker district, upon notification from HQ BMB.

(19 CFR 111.51(b))

### 3. Cancellation of License or Permit — Death

When the issuing port is notified in writing of the death of an individual licensee, the port director will request that the Assistant Commissioner, OFO cancel the broker’s license. The letter, showing cause of cancellation for reasons of death, becomes a permanent part of the port file.

When a port director becomes aware of the death of a broker, the port director should make reasonable inquiry to verify this information. Upon verification, the port director should attempt to obtain the deceased person’s license and a copy of the death certificate from the next of kin, if available.

If obtained, the license will be marked “**CANCELED**” and retained in the port broker management file. A copy of the written notification letter, along with a copy of the death certificate, will be forwarded to the HQ BMB for cancellation of the license for reasons of “death.” The HQ BMB will publish notice of cancellation of the license in the Federal Register and suspend the broker’s filer code, if appropriate.

## E. Voluntary Suspension of License or Permit

### 1. Voluntary Suspension

The Assistant Commissioner, OFO, may accept a broker’s written voluntary offer of suspension of the broker’s license or permit for a specific period of time under any terms and conditions to which the parties may agree. The agreement must be signed by the Assistant Commissioner, OFO, and the subject broker. A broker may or may not be required to tender status report fees as specified in the agreement. The broker normally retains physical possession of the license during the period of suspension.

A Customs broker must submit a written request to the Assistant Commissioner, OFO, when it wishes the license/permit reinstated. The Assistant Commissioner, OFO, will advise the broker, in writing, of the decision to grant or deny the reinstatement request.

(19 CFR 111.52)

## 2. Federal Employees

A licensed Customs broker who becomes a federal employee subsequent to receiving his/her license, must within 90 calendar days of becoming a federal employee, submit a written request to the Assistant Commissioner, OFO, to voluntarily suspend his/her license without prejudice. Upon receipt, HQ BMB will send to the employee a suspension agreement to be signed by the Customs broker and the Assistant Commissioner, OFO. The specific period for the voluntary suspension will be defined as the length of the federal employment.

## 3. Filing of Status Report & Payment of Fee

A person whose license has been voluntarily suspended is required to file the status report provided for in 19 CFR 111.30(d) and pay the corresponding fee. Similarly, the failure to submit a timely status report and fee may result in revocation of the broker license by operation of law.

### **F. Disposition of License or Permit**

The following chart illustrates the legal implications of the revocation, suspension or cancellation of a license or permit, either with or without prejudice. A broker may have the right to retain his/her license or permit under certain circumstances. A broker may be prohibited from conducting customs business or have certain appeal rights when his/her license is revoked, suspended or canceled. In addition, a broker may be obligated to continue to file his/her triennial status report and fee depending on the circumstances.

## DISPOSITION OF LICENSE OR PERMIT

	Cancellation	Suspension	Revocation
<b>Voluntary or Involuntary</b>	Always Voluntary i.e., at the request of the broker, except when <b>Customs cancels license because of death of broker</b>	Voluntary or Involuntary	Always Involuntary
<b>Retention of License or Permit</b>	License or permit is taken away from broker	Broker retains license or permit	License or permit is taken away from broker
<b>Customs Business</b>	Broker cannot conduct customs business	Broker cannot conduct customs business <i>for a specified period of time</i>	Broker cannot conduct customs business
<b>Appeal Rights</b>	No appeal rights when canceled “with prejudice”	Appeal rights when suspended involuntarily	Appeal rights <b>except when revoked</b> by operation of law
<b>Triennial Report/Fee Payable</b>	No Triennial report/fee is due	Triennial report/fee is due during the suspension agreement	No Triennial report/fee is due

## TERMINATION OF BROKERAGE BUSINESS AND/OR BANKRUPTCY

### A. Termination of Brokerage Business

Upon permanent termination of a brokerage business, written notification of the name, address and telephone number of the party having legal custody of the brokerage records, and address of the location where the brokerage records are stored within the district, must be provided to the director of each port where the broker has been issued a permit. (Refer to Chapter 12.A.9)

An individual broker has responsibility for providing the aforementioned notification when s/he has been conducting Customs as a sole proprietor. It is the responsibility of the officer/member/partner of a corporation/association/ partnership to provide such written notice when an organization terminates its operations.

Entry summaries and checks may be accepted until the date the license has been surrendered to the port director. Brokers are to be reminded of their responsibility to resolve all open entries, liquidated damages cases and any and all other outstanding Customs business issues. A license should not be surrendered to Customs until a broker has brought to a close all of his/her Customs business conducted under that license.

The original of the license and all permits must be surrendered; the license to the port director that originally delivered the license to the broker; all permits to the port directors pertaining to the affected broker districts. A written request that the license and permit(s) be canceled “without prejudice” should accompany the surrendered license and/or permit(s). Both the license and permits should be marked “**CANCELED**” (Refer to Chapter 8.C).

A broker may propose to close one or more offices, in which case, s/he must surrender the permit(s) to the port director(s) where the permit(s) were issued. (Refer to Chapter 8.C).

Any broker may retain a license in an inactive status, but must continue to meet the minimum requirements of 19 CFR 111.11 and file the status report and fee. If the broker is a corporation, association or a partnership, the brokerage business must maintain at least one place of business within the U.S. to retain its license in an inactive status.

(19 CFR 111.30(e), 111.51, 111.96 & 143.37(b))

### B. Bankruptcy Proceedings

If a broker notifies the port director that it will be undergoing bankruptcy proceedings and that it is going out of business, the port director should immediately notify HQ Broker Management Branch (BMB) personnel so the appropriate filer codes can be suspended. The broker should discontinue conducting Customs business. HQ will take

immediate action to remove and cancel all functions related to the broker's ability to obtain electronic cargo release. Field offices will be advised by HQ not to accept any entry, BRASS or NCAP transactions.

Customers of bankrupt brokers who are going out of business must choose another licensed broker for the processing of cargo release and entry summary filing. Customs officers are reminded that they may not refer the trade to any particular brokerage firm.

Any other issues or questions should be immediately directed to HQ. The claim of the government for unpaid duties against an insolvent importer and a Customs broker acting as importer of record has priority over obligations to creditors other than the United States.

(19 CFR 141.1(c))

On the following pages are guidelines to utilize when a broker files for bankruptcy. To ensure uniformity, whenever a broker files bankruptcy, HQ will take the lead. HQ will ensure all field offices are kept informed on procedures to follow and the HQ personnel that should be contacted when questions arise.

### **Guidelines for Processing Entries/Entry Summaries for Broker Undergoing Bankruptcy Proceedings**

The following are guidelines that the Office of Field Operations previously issued for a broker that filed bankruptcy. These guidelines should be used whenever a broker notifies Customs that they have begun bankruptcy proceedings. If situations arise that fall outside the scope of these guidelines, please call HQ for assistance.

1. If the broker remits money for an entry summary, take it. If it turns out that there was too much money submitted for an entry summary or a group of entry summaries (i.e., broker pays and the importer pays as well), a protest can be filed at a later date for a refund.

#### **NOTE:**

If the payment is received and the entry summary documents (CF 7501, invoice, etc.) *are not* submitted with the payment, collect the money on a Collection Receipt (CF 368) under Class Code 072, as a Miscellaneous Payment (MP). This will place the collection in suspense. The entry number must be referenced on the CF 368 so that the monies can be reapplied when the entry summary is eventually submitted. Annotate the check number on the CF 368. Forward the receipt copy of the CF 368 (pink) to the party that submitted the payment. In some cases, this may require the mailing of the receipt to the importer of record.

It would be easier to apply the monies directly to the entry summary record in ACS; however, this would place the entry summary in accepted status, and we would have no record to determine whether the paper entry summary documents were submitted or not. This could eventually lead to auto and deemed liquidations.

2. If the broker's courier/dispatcher submits an entry summary that is due, or if the importer of record presents an entry summary with the broker's filer code, accept the entry summary. If duties, taxes and fees are not included, proceed with liquidated damages for money no-files.
3. The importer of record (IOR) can hire another broker to submit an entry summary and payment of duties, taxes and fees for any open entries that the bankrupt broker has not filed. The importer must ensure that a power of attorney is in place for the new broker.

This will require that a new entry number be assigned, and the replacement broker must submit an entry/entry summary (live entry). A proper bond must be charged on the replacement entry/entry summary (either on the new broker's bond or the importer/client's bond).

Use the RELC function to change the release date on the replacement entry to reflect the date the merchandise was originally released on the bankrupt broker's entry.

If the replacement entry/entry summary is submitted to Customs within 10 working days of the bankrupt broker's entry, the original entry can be canceled (DO NOT DELETE). Please reference the entry number in the NOTE function of the replacement entry/entry summary for tracking purposes.

4. If the bankrupt broker has open entries and 10 working days have already passed, the importer can still hire a new broker, as described in 3. above. When the replacement broker submits the replacement entry/entry summary (live entry), cancel the bankrupt broker's entry (DO NOT DELETE). Use the RELC function to change the release date on the replacement entry to reflect the date the merchandise was originally released.

In those cases where the replacement entry summary is submitted in an untimely manner, liquidated damages (i.e., late file) should be issued against the importer of record on the replacement entry summary, as long as the replacement entry summary lists the same IOR and surety that was designated on the original entry. If there is a situation where the IOR and surety on the original entry differs from the IOR and surety on the replacement entry summary and liquidated damages should be assessed, please contact HQ for instructions.

Use the NOTE function to cross reference the two entries (i.e., annotate the original entry number on the replacement entry/entry summary)

5. The bankrupt broker may present a statement payment along with the entry summary(ies), but no check to pay for the duties. If importer then submits a check to pay the duties for their entry summary(ies), the summary(ies) should be deleted from the statement, and duties collected as ABI/N. If duties are not submitted, issue money no file cases against the entry summary(ies).

If there are type 02 quota entry summaries that need to be deleted from an ACH statement, the quota will first need to be deleted via QSCO, then delete the summaries from the statement and finally you will need to reapply the quota.

If there are pending ACH and statement payments that have not been paid for the bankrupt broker's entry summaries, attempt to notify the importers that they need to submit a check for payment of the entry summaries included on the statements along with an entry summary package.

6. If there are entries listed on the Late Report (B08) for the bankrupt broker, take no action to issue the no-file case until notification from HQ. It would be prudent to wait until replacement entries and entry summaries are submitted, and to issue late-file liquidated damages at that time. The issuance of no-file cases against these entries creates an additional workload burden on field offices, as described in the instructions in the following paragraph.

If a no-file liquidated damages case has been issued against these entries, and a replacement entry summary with a new entry number is subsequently submitted, the no-file can not be converted to a late file in SEACATS. The no-file case will have to be canceled and a late-file liquidated damages against the replacement entry summary issued. Use the Option 1 amount of \$100.00 for these cases.

If the replacement entry summary lists a different IOR and surety than what was designated on the original entry, please contact HQ for instructions prior to processing the late file case.

7. The importers should be advised that if they are listed as IOR on the entries, they are ultimately responsible for submission of entry summaries and payment of duties. Additionally, if an importer calls for information about outstanding entry summaries and outstanding payments, make every effort to provide them with the information that they need.

If the bankrupt broker is listed as the IOR on any of the outstanding entries (prior to the filing of the bankruptcy) and liquidated damages are in order, please ensure that the liquidated damages are issued against the broker.

8. If the bankrupt broker has outstanding debit vouchers, they will be placed on sanction. The BDEL function in ACS should be queried to verify if the broker is on sanction.

If the broker has offices that are still open and entry summaries are being filed, DO NOT accept any of the broker's checks. All payments submitted by the broker MUST BE in the form of a certified/cashier's check, money order, cash or importer's check made out to Customs. No exceptions!

If on national sanction, the broker's ACH statement privileges will be revoked.

9. Refunds/Bills: Process all liquidations, reliquidations, SILS and administrative refunds (business as usual). Do not remove any reference numbers or cancel CF 4811's unless the IOR specifically requests this in writing.
10. ACH Statements Debit Vouchers (DV): Debit vouchers will be issued if the broker stops the transmissions of ACH payments. In this situation, the ENAI record will indicate that the summary is "fully paid." This is misleading, the ACH transmission may have been stopped prior to the payment being electronically submitted.

If a check is received from an importer for an entry summary that was scheduled for ACH statement payment, AND the ENAI record shows fully paid, National Finance Center (NFC) should be contacted to ensure there has been no DV issued. If there is a DV, the money should be paid on a Collection Receipt CF 368 and the reference should be the DV number and entry number that pertains to the collection. A copy of the cash receipt should be faxed to NFC immediately.

If the bank returns any of the broker's check to the local office, the check should be immediately forwarded to the NFC. The bank should be notified that all bad checks should be forwarded directly to NFC for timely input and reconciliation. If there are any questions about the debit vouchers, NFC should be contacted to ensure that proper procedures are followed.

If the importer submits the entry summary with payment and ENAI record indicates that the summary has not been paid, the summary should be deleted from the statement and the money collected as an ABI/N summary.

11. Check Payments: All replacement entry summaries MUST BE paid at the port of entry. If a replacement entry summary and check is received for another port, return it to the broker or importer.
12. Late Statements: Customs may issue a penalty against a broker who files untimely statements that include multiple entry summaries, using an Option 1 amount of \$500.00 plus interest. This is discretionary on the part of Customs, and HQ will decide on a case-by-case basis if liquidated damages will be issued.
13. If there are outstanding Temporary Importation Bonds (TIB) with the broker's filer code, the IOR should be advised that they are responsible for closing the TIB and/or extending the TIB. Ports will need to issue liquidated damages if the TIBs are not closed.
14. After the filing of the bankruptcy petition, if there are any entries indicating the bankrupt broker as the IOR and liquidated damages are due, the liquidated damages should be issued directly against the surety. Do not send a copy of the liquidated damage (CF 5955a) to the broker.

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## AUTOMATION

### A. Automated Commercial System (ACS)

In the following two sections, you will find detailed information concerning the two primary ACS files used in broker management, the BFC and BFB files. An explanation of these two ACS files, related function codes and their applications in broker management may be found in Appendix 10-1.

#### 1. Filer Codes — BFC File

A filer code is a unique identifier for each legal entity who is qualified by Customs to file entries on their own behalf or on behalf of another. A filer may be qualified to file entries in a manual mode or in an automated mode through ABI.

Port personnel must first obtain a written request for a filer code from the requestor. The field office should forward a cc:Mail message to HQ Broker Management Branch (HQ BMB), which contains the following information:

- The legal name of the requestor
- Business address of the requestor
- Name of the contact person at the business
- Business telephone number
- If the request is for a broker, the license number must be included.
- If the request is for an entity other than a broker, the importer of record number must be included.

**No requests for filer codes will be accepted at HQ directly from any member of the public. The importer of record number (IRS, EIN or social security #) for any filer code requestor (except Customs brokers) must be on file in the ACS SRE file before a request is sent to the HQ BMB and a filer code is assigned.**

HQ assigns all filer codes. Filer codes will be assigned by HQ BMB within three business days after receipt of the request whenever possible. Any requests for filer codes for which the requestor's importer of record number has not been established in the ACS SRE file will be returned to the originating port. To ascertain the assigned filer code, the field office should query the ACS system (BFCL 2/broker or other requestor's name) and the system will display the assigned filer code.

Filer code requests may be accepted and filer codes issued to different types of entities that conduct customs business. The BFC file contains a field, which notes the type of filer in a numeric fashion. The following listing represents the different types of entities that may have a filer code assigned to them and the numeric code, which identifies the type of filer:

FILER TYPE	TYPE CODE
Customs Broker	01
Importer	02
Carrier	03
Freight Forwarder	04
Customs Entry Unit	05
Surety	06
Protest Filer	07
ASI Filer	08

## 2. Filer Codes — BFB File

The BFB file is the ACS District Filer Maintenance module. This module contains information regarding broker and importer filer codes approved by Customs.

Once a filer code is assigned by HQ, the BFB module in ACS must be updated with the filer code information by port personnel using ACS function code BFBA.

The information contained in this module consists of the following:

- filer code
- port code
- entry team assignment
- name, address, contact person and phone number
- operating fee paid for calendar year(s)
- operating permit status

Upon receipt of any changes to the information noted above, port personnel must verify and input these changes in the BFB file using ACS function BFBC. **Only** HQ BMB personnel may make any changes to the name of a filer using ACS function code BFCC. Abbreviations of the name will not be used unless the abbreviation was used on the original application.

Broker Management Officers must ensure that permit user fees are properly collected which will be reflected in the ACS BFB file. Upon proper collection of the current year's permit user fee, the BFB file should reflect that the current year's payment has been made. This can be verified by viewing the "operating fee paid for calendar year(s)" block on the BFBS screen.

If the user fee is collected using the wrong collection code, the BMO must apply the collection to the broker's BFB file by using ACS function code BFBP (Fee Payment Status Maintenance). When using this function to update the fee collection, input the port code, filer code, and indicate (A) to apply a payment received, (R) to remove a payment previously applied, or (C) to change the calendar year of a payment. Additionally, a memorandum will be sent to the National Finance Center (NFC) requesting that the permit user fees be applied to the correct accounting class codes (497 or 997).

Verification of the collection of national permit user fees will be completed by HQ BMB personnel.

### 3. Listing of Permitted Brokers

The Customs website contains a listing of permitted brokers by port. The data contained at this site is extracted from the BFB file. The items that are included on the web page are the broker name, filer code, district port code, all address fields and telephone number. Only brokers that have paid the current year permit user fee appear on the Customs web page.

It is important that all changes to the BFC and BFB files be made timely and accurately. Changes to these files will be uploaded to the web page periodically. When a broker contacts Customs and provides sufficient written documentation of changes to these files, these changes will be made so that the web page will be updated accordingly.

## **B. Port Activity Tracking Systems (PATS)**

The Port Activity Tracking System, (PATS) was developed using the combined efforts of the field. Upon installation at Service Port locations, PATS will be the primary Broker Management software tool.

This database basically provides two major functions: 1) to eliminate manual logging of customs correspondence, and 2) to provide quick and easy data retrieval. However, when the database is used as a whole, its ultimate purpose is to provide Customs officers with data that can be used during the Informed Compliance process.

It is important for the users to understand that in most instances, the data recorded in this database neither provides the “whole picture” of a broker, nor does it provide a “report card” on a specific broker or importer. Rather, the data are intended to be used by Customs officers for analysis and utilized collectively, in combination with related subject matter expertise. PATS should be used as a tool to identify potential problems, and not as a simple reporting device that draws its own conclusion.

PATS is a Microsoft Access database application designed to facilitate data input, manage information and generate reports and statistics for several processes within various Customs branches. The information in PATS is only as good as the input. The integrity of the information must be ensured by the operator.

PATS contains the following modules:

- Broker Licensing and Permit Tracking
- Entry Rejections / Miscellaneous Forms
- Customs Forms (CF 28, CF 29, CF 4647 & CF 6455A)
- Informed Compliance Log and Notice
- National Enforcement Tracking System
- Reports and Queries

The Broker Licensing and Permit Tracking module tracks broker examinations, applications, licenses, permits, payment of permit and triennial fees, and qualifying officers. The module contains all of the Headquarters approved correspondence related to these items. A system of alerts automatically identifies delinquencies based on due dates and deadlines.

The other modules support the informed compliance process. Used collectively, the modules in PATS become a compliance tool to assist in addressing importer and broker compliance. PATS provides a central location for commonly used forms and programs, making research and data retrieval very easy while promoting local and national uniformity.

For more information on PATS, contact a local PATS administrator for a copy of the PATS User's Guide.

## SELF-INSPECTION

The worksheet on the following page has been prepared to replace the existing Broker Licensing/Compliance Core Area Self-Inspection Worksheet in use at the time this Handbook is issued.

Activity Evaluation # 1 has been instituted to ensure the proper collection of permit user fees at the port level. Permit user fees are integral to the operation of the HQ Broker Management Branch (BMB) and all of the training and services it provides. In addition, the proper collection of these fees and proper annotation of these payments allows all Headquarters and field offices to easily identify those brokers who have or do not have a local permit. Prevention of waste is the prime purpose for incorporating the monitoring of this activity into the self-inspection process.

Activity Evaluation # 2 has been incorporated into self-inspection to ensure that Customs brokers are conducting customs business in accordance with Part 111 of the Customs Regulations. This is also an effective way to ensure that Customs brokers are exercising responsible supervision and control over their customs business which will result in an increase in broker compliance. The elimination of waste and abuse will result from the monitoring of this activity.

Activity Evaluation # 3 has been adopted so that the necessary oversight by the BMB in the area of broker penalties may be ensured. In order to increase uniformity and eliminate waste and abuse in the assessment of broker penalties under 19 USC 1641 by field offices, this activity has been incorporated into the self-inspection process.

## CORE AREA SELF-INSPECTION WORKSHEET

Core Area: *Broker Licensing/Compliance*

Office Inspected: \_\_\_\_\_

ACTIVITY EVALUATION	Yes	No*	N/A	HQ: Guidance	Remarks
1. Does the Broker Management Officer (BMO) ensure the proper collection of the annual local permit user fees and take appropriate action when non-payment occurs? (Broker Management Handbook, Collections Handbook, 19 CFR 111)				<b>METHODOLOGY:</b> Choose a random sample of 30 brokers or 5 %, whichever is less, holding a permit during the subject self-inspection period. Review CF 368's used to collect fees for payment by the random sample of brokers. Review to ensure local permit user fees payable were paid and collected with proper collection codes. Were permits revoked for non-payment, were appropriate letters sent and filer codes revoked in a timely manner?	
2. Does the BMO follow proper procedures when the port is notified of the loss of a qualifying individual broker in accordance with 19 CFR 111.45(a) & (b) and the Broker Management Handbook?				<b>METHODOLOGY:</b> Choose a random sample of 30 notices or 5 %, whichever is less, which have been provided to the BMO of the loss of a qualifying individual during the subject self-inspection period. Were the procedures laid out in Chapter 8 of the Broker Management Handbook strictly adhered to in these cases?	
3. Are copies of all 1641 penalty notices issued to brokers forwarded to HQ Broker Management Branch by the BMO upon issuance to brokers? (Broker Management Handbook)				<b>METHODOLOGY:</b> Review office files to ensure that copies of 100% of all 1641 penalty notices were mailed to HQ Broker Management Branch.	

\*If no, complete the addendum.

## CORE AREA SELF-CERTIFICATION (Check one):

Acceptable

Needs Improvement

I have conducted a self-inspection of this Core Area, and this worksheet accurately represents the results of my inspection.

Reporting Officer Certification: \_\_\_\_\_ Date: \_\_\_\_\_

I have reviewed this worksheet and concur that the rating accurately reflects the results of this self-inspection.

Supervisor Reporting Officer Certification: \_\_\_\_\_ Date: \_\_\_\_\_

OFOt21 September 1, 2001



## RISK MANAGEMENT IN THE BROKER ENVIRONMENT

### A. General Principles of Risk Management (prepared by the Risk Management Branch)

Around the world, Customs Services are now asking whether it is better (a) to use their finite resources to perform limited reviews on 100 percent of imports, or (b) to use those limited resources to perform extensive, thorough reviews on a smaller percentage of imports. Should Customs assume that all importers, and therefore all importations, are somehow deficient and result in a loss of revenue or present a threat to the government and public? Or, should Customs accept, based on its own experiences, that some importers and some imports present a much more significant risk than do others?

The key word is “risk.” Customs administrators must focus on what poses the greatest risk to the government and public. Customs accepts that many importers have a record of complying with import laws, and they do not therefore present a risk that justifies a significant allocation of resources. This logic leads to performing a risk analysis or risk assessment to determine which importers and what imports merit more stringent attention.

Dearth of knowledge increases risk. The purpose of risk management is to close the gap between the known and unknown. Risk is characterized by its

- ✓ mystery-if Customs were 100 percent sure of the compliance or noncompliance of every shipment, its job would be easy;
- ✓ mutability-risk changes over time as trade laws, importers, and industries change; and
- ✓ manageability-Customs can confront and take action on noncompliance.

Risk management is the administration of concentrated efforts aimed at identifying and controlling events that have the potential to cause significant problems. In Customs trade terms, that means identifying those imports that represent the greatest risk of noncompliance, and subsequently focusing resources on those areas.

The U.S. Customs Risk Management Process for trade consists of four key steps:

- Collecting data and information
- Analyzing and assessing risk
- Prescribing and taking action
- Tracking and reporting

Established programs such as Account Management (AM), Compliance Measurement (CM), Compliance Assessment (CA), Focused Assessment (FA), and Enforcement Evaluation Teams (EETs) are critical components of the Customs Risk Management Process. To be most effective, the Customs Risk Management Process must be formal, systematic, and applied in a disciplined manner. Each person involved in regulating the importation of goods into the commerce of the United States is part of the Customs Risk Management Process.

When managing broker compliance, whether nationally or on a local level, the principles of the risk management model are identical to the trade compliance risk management model, but are simply adjusted to brokers and issues surrounding them. The methodology is the same. (See the Trade Compliance Risk Management Handbook).

## **B. Risk Management and Broker Compliance**

### **1. Background**

Upon installation at all service ports, the Port Activity Tracking System (PATS), will become the primary broker management tool. Dataquery, CAPPS and ESFAS are also tools used to gather data for broker management. It is expected that all field operations disciplines: import specialists, inspectors and entry officers will use these tools in order to apply risk management principles in managing broker compliance via a data driven approach. BMOs may manage broker compliance by studying and analyzing the data available through PATS and other tools, identifying brokers with problems, and addressing them appropriately by using appropriate informed compliance methodology. PATS, in particular, facilitates data collection and analysis and serves as an excellent tool to apply risk management principles in the area of broker management. A more detailed discussion of PATS and its applications can be found in Chapter 10.B of this handbook.

BMOs and others involved in broker management activities can collect data and information with respect to broker non-compliance from PATS and other sources, to analyze and assess the risk of the non-compliance, prescribe action to correct it, and track and report a broker's progress in improving compliance.

### **2. Collect Data and Information**

Whenever possible, the collection of data and information related to broker compliance should be done in an electronic format. PATS is ideal for this purpose as it captures informed compliance information provided to brokers, including the following: all informed compliance notices, rejection notices, other correspondence, notation of telephone conversations, and other customs forms. A database can be built comprised of information that can be analyzed by any Customs Officer for trends and patterns.

PATS serves as an information tool as well as documentation of our efforts. Under the current version of PATS, version 3.1, the research options described in the following paragraphs are available to collect data and information in the Decision Support System Module (DSS).

The DSS module of PATS allows for the collection of data in four formats:

- *Summary Analysis* — A summary of all forms sent to a broker during a particular time frame. Problem areas can be identified and reports can be produced which categorize different problem areas.
- *Historical Analysis* — A report summarizing all forms issued to a broker can be produced.
- *Time line Analysis* — A report summarizing the percentage rate of forms issued to a broker for a particular time frame can be produced.
- *Baseline Analysis* — A report summarizing the number of forms issued to brokers of similar size can be produced.

Dataqueries developed as part of the broker account model, as well as, ESFAS and CAPPs, provide additional tools and data to determine where there is non-compliance. (See Chapter 16).

### 3. Analyze and Assess Risk

Risk management principles mandate the collection of data and information, subsequent analysis of the data, and the assessment of risk for any non-compliant patterns detected. Collected data should be analyzed to identify areas of high volume non-compliance and repetitions of same/similar issues for brokers in relation to their peers. Data should also be analyzed to determine whether or not problem areas are attributable to the broker or circumstances beyond the broker's control.

Risk assessment should encompass many factors, including a broker's recent performance, the significance of the error or problem, as well as the broker's previous interest and efforts to improve their performance in the case of repetitive problems. Action should be taken to address problem areas that pose the greatest threat and to which resources applied will have the greatest effect on an increase in broker compliance.

### 4. Prescribe Action

There are a number of informed compliance tools available to address areas of high-risk broker non-compliance. Choosing which tool to use should be based upon which methods have already been used in previous informed compliance efforts, and how often. Initial communication should be recorded in PATS on the appropriate form or in the contact log. To elevate an issue, the informed compliance notice may be used.

Warning letters are often an effective tool. Determining whether a meeting or a warning letter is more appropriate may depend on the circumstances and the broker's history in responding to such warning letters. When sending a warning letter, remember the following points: Describe the problem(s) and give specific examples; quote the appropriate policies, rules, regulations and laws that pertain; require a written response or follow-up with a deadline (as appropriate); and warn the broker of the consequences of continued non-compliance.

A face to face meeting with a broker is another effective informed compliance tool. A meeting with a broker can have a narrow focus or can cover many issues. Refer to Chapter 13.B of this handbook for guidelines on how to prepare for a broker meeting/broker review. The preparation for a meeting, the actual meeting, the agreement on any problem areas identified and a prescribed action plan which is produced as a result of the meeting are all important steps in the informed compliance process. These steps collectively serve to inform the broker of non-compliance, hold the broker accountable as well as to document Customs' efforts. Without follow through by the initiating officer, we are prevented from moving along the "inform/enforce" path and are caught in the "inform" loop.

## 5. Track and Report

After an appropriate amount of time has passed since the prescribed action has been instituted, research should be repeated to evaluate the broker's performance in the problem areas previously identified and other areas as well. If the analysis has proven that the broker has addressed and corrected the areas of previously identified non-compliance, a report should be provided to the broker of his/her progress and recorded in the PATS contact log. If there are still minor points of concern or the broker's performance has diminished in other areas, the broker's performance should be continued to be monitored and s/he should also be informed of any new deficiencies in compliance. The informed compliance cycle begins again.

If no improvement is noted in areas previously addressed by progressive, recent and face to face informed compliance action, the appropriate action should be prescribed based on the circumstances at hand. Because progression is a key element in broker penalties, whether or not we pursue a broker penalty after a counseling session will depend on several factors, including: the broker's history of non-compliance; how well Customs documented that history; how well Customs guided, educated, informed, counseled, warned and penalized the broker in response to their problems over time; and how well Customs documented the history of those efforts made by Customs with that broker. Refer to Chapter 15 of this handbook for more detailed guidance on the assessment of broker penalties.

## BROKER OVERSIGHT

### A. Broker Reporting Requirements

Pursuant to Title 19 of the Code of Federal Regulations, licensed brokers are required to submit to Customs various information, reports and fees. In addition to the items already discussed in other chapters of this handbook, Broker Management Officers (BMO) should ensure that each broker file contains the information set forth in this section as it applies to the affected broker. Appendix 13-1 contains a complete listing of the items to be found in every port broker management file. BMOs must be cognizant of these requirements and ensure that all brokers within their jurisdiction are complying with these regulations.

If a broker fails to comply with reporting requirements, the licensee should be reminded of the regulation by the appropriate informed compliance means, such as informed compliance letters, broker seminars, Information Notices, port newsletters, local web sites, etc. As provided for in Subpart D of Section 111 of the Customs Regulations, when repeated patterns of non-compliance occur after appropriate informed compliance has been taken, BMOs should institute appropriate penalty action against the broker.

#### 1. Employee Information

Each broker must provide to the port director at each port at which the broker intends to transact customs business, in writing, the following information on all its employees. This information must be submitted upon issuance of a permit or upon opening an office at a port within a district for which the broker already has a permit:

- Name of employee
- Social security number of employee
- Date and place of birth of employee
- Current home address
- Last prior home address
- And, if employed by the broker for less than 3 years, the name and address of each former employer and the dates of employment for the 3-year period preceding his/her current employment.

An up to date list of each current employee's name, social security number, date and place of birth, and current home address, must be submitted with the triennial status report.

(19 CFR 111.28(b)(1)(i))

## 2. New Employees

A broker MUST submit the same information listed in A.1 of this chapter within 10 calendar days after the broker has employed a new employee for 30 consecutive days.

(19 CFR 111.28(b)(1)(ii))

## 3. Terminated Employees

Within thirty calendar days after the termination of any person employed longer than 30 consecutive days, a broker MUST submit in writing the name(s) of the terminated individuals to the port director of the port where that person was employed.

(19 CFR 111.28(b)(2))

## 4. Termination of Qualifying Member or Officer

An individual who is the qualifying member of a partnership or who is a qualifying officer of an association or corporation, MUST IMMEDIATELY provide written notice to the Assistant Commissioner when his/her employment terminates and must send a copy to each port director where a permit has been granted.

(19 CFR 111.28(c))

## 5. Change in Ownership

If the ownership of a brokerage changes and shares in the brokerage are not publicly traded, the broker must immediately provide written notice to the Assistant Commissioner and a copy of that notification to the director of each port through which a permit was granted. If the change in ownership results in the addition of a new principal of the organization, Customs reserves the right to conduct a background investigation on the new principal. ("Principal" is defined as any person having at least a 5% capital, beneficiary or other direct or indirect interest in the business of a brokerage). (Refer to Chapter 6).

(19 CFR 111.28(d))

## 6. Change of Address

If a broker changes his/her business address, written notice must immediately be given to each port director affected by the change. If an individual broker, who is not actively engaged in customs business as a sole proprietor, changes his non-business mailing address, he must give written notice of the new address in the Status Report required every 3 years, pursuant to 19 CFR 111.30(d).

(19 CFR 111.30(a))

## 7. Change in an Organization

A partnership, association, or corporation must immediately notify, in writing, each port director through which it has been granted a permit, the following information:

- The date on which the licensed member or officer ceases to be the qualifying member or officer, and the name of the licensee who will succeed as the qualifying member or officer;
- Any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization (i.e., for example, conversion of a general partnership to a limited partnership, merger with another organization, selling (“divestiture”) all or part of the organization, or the entry into bankruptcy proceedings.) (Refer to Chapter 6).

(19 CFR 111.30(b))

#### 8. Change in Name

A broker who undergoes a change in name (i.e., through marriage, divorce, or other legal means) or who proposes to operate under a trade or fictitious name, in one or more states within the district in which a permit has been issued, and is authorized by State law to do so, must submit to the Assistant Commissioner, OFO, evidence of the authority to use that name. The name can not be used until HQ approval has been received. (Refer to Chapter 6).

(19 CFR 111.30(c))

#### 9. Custody of Records Upon Cessation of Operations

Upon the permanent termination of a sole proprietorship brokerage business, the broker **MUST** provide written notification of the name and address of the party having custody of the brokerage business records to the director of each port where the broker was transacting business and where a permit was issued.

Upon the termination of a partnership brokerage business, each member of a partnership who holds an individual broker’s license **MUST** provide written notification of the name and address of the party having legal custody of the brokerage business records, to the director of each port where the partnership transacted business.

Upon the termination of an association or corporate brokerage business, each association or corporation officer who holds an individual broker’s license **MUST** provide written notification of the name and address of the party having legal custody of the brokerage business to the director of each port where the association or corporation transacted business within each district for which a permit was granted.

(19 CFR 111.30(e))

### **B. Broker Reviews and Broker Compliance Reviews**

The document found on the following pages is gleaned from many sources and was developed by entry personnel throughout the country to assist in broker compliance reviews. While there is currently no minimum requirement for how often broker

compliance reviews should take place, ports should use risk management techniques to determine which brokers are subject to a compliance review. Broker compliance reviews generally take place at the broker's office. Broker compliance reviews may be scheduled as a routine review (no apparent problem areas with the broker), or they may be scheduled for a specific cause (problems have been detected with one or more areas of the broker's operation, in any discipline, including release, classification, etc). The aforementioned items are to be used as a starting point and can be modified or eliminated as deemed appropriate.

The following document contains suggested topics that the Entry Specialist may want to use to prepare for and administer a broker review. Each port can determine whether to use this document or develop its own. The provided document can also be tailored for different situations.

Licensed Customs brokers are obligated to comply with the Code of Federal Regulations (CFR), Title 19, Part 111, and all other applicable laws and regulations. They are subject to the revocation or suspension of license or monetary penalties in lieu thereof, in accordance with Title 19, U.S.C. 1641(d). It is important to note that the document found on the following pages (or other notes regarding the interview) should be kept in the broker compliance file for the broker visited. This is important, should any type of enforced compliance action (letter of reprimand, broker penalty or proposal to suspend/revoke a broker license) be initiated at a later date as a result of any issue, which arose from this compliance review.

# BROKER PREMISES VISIT

## SECTION I

### ENTRY SPECIALIST PREPARATION CHECKLIST

- Contact broker and set up a date and time for visit (arrange for license or permit qualifier to be present).
- Obtain through dataquery, a listing of the broker's clients (required for reviewing powers of attorney)
- Randomly select a number of entries from various sources, ACS, PATS, if available, dataquery, etc. to verify client POA's.
- Obtain information (problems) related to the broker's filing of single/continuous entry bonds
- Query CLVL 4/filer code — for debit voucher listing
- Compile a list of late files and entry summaries submitted without a check.
- Review Bulletin Notice for change entries with probable CF 29 action.
- Using RMTP, print and review the B03 — Monthly Filer Activity Statistics Report for entry reject rate.
- Pull a quota summary report.
- From the port's broker file, check the date the last current employee list was received.

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**SECTION II**  
**ENTRY SPECIALIST BROKER PREMISES VISIT REPORT**

Brokerage: \_\_\_\_\_ Date of Interview: \_\_\_\_\_

Filer Code: \_\_\_\_\_

Person(s) Interviewed/Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(Person interviewed SHOULD be either the qualifier for the license or permit qualifier or both).

**OBJECTIVES:**

\_\_\_\_\_ Initial Visit    \_\_\_\_\_ Follow-up    \_\_\_\_\_ COMPLIANCE/OTHER

Is the qualifying licensee(s) working for or qualifying the license or permit for another broker or any other company?    Yes (  )    No (  )

If yes, explain.

Ownership of company and any conflict of interest with other brokers; freight forwarders, employees related to any U.S. Customs employees?    Yes (  )    No (  )

Does the broker act as an importer himself?    Yes (  )    No (  )  
(19 CFR 111.31(c))

What method does the broker use to determine if any employee may have a felony conviction? (19 CFR 111.53(e))

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**POWERS OF ATTORNEY  
(CF 5291)**

Obtain copies of employee power of attorney to sign entries?

Match with actual entries?      Yes ( )      No ( )

Importers of Record:

Entry Number

Consignee

Entry Date

POA Date

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**POWERS OF ATTORNEY**  
**(Given to the broker by his clients)**

How is the power of attorney obtained?

Are power of attorney's received for "quick" shipments that the importer may request by telephone? (Fax copy OK).

Establish whether POA was properly executed prior to the time of release of merchandise for selected new clients.

Entry Number

Importer Number

Entry Date

POA Date

**BONDS**

Does the broker sign bonds for clients as attorney-in-fact?      Yes ( )      No ( )

If the port has determined that problems exist with single/continuous entry bond submissions, discuss those problems with the broker and note broker's comments on problems.

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## REFERENCE MATERIALS

Are the following reference materials available:

**Customs Regulations:**

Are the Customs Regulations up to date? How are they updated (e.g., by Customs Bulletin or Federal Register)?

**Harmonized Schedule:**

Verify that the broker has the most recently issued Harmonized Tariff Schedule

**Information Notices:**

Administrative Mail Messages (How is this information distributed to employees?)

## RECORDKEEPING

Where are records maintained? If not maintained at this office, has the required approval been obtained?

(19 CFR 111.23(a)(1))

Have there been any changes in the location where the records are kept?

Yes ( )      No ( )

Record retention five-year policy adhered to?      Yes ( )      No ( )

(19 CFR 111.23(a)(2))

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## FINANCIAL

How does broker handle optional payment of duty payable to USCS. (19 CFR 111.29(b))  
Is the importer notified of optional payment in accordance with 19 CFR 111.29(b)?

**Examples.**

Payment received after due date to USCS within 5 working days of receipt.  
(19 CFR 111.29(a))

Is a written statement sent to client within 60 days of receipt of any funds received from the government for the client, or received from the client if not paid? (Obtain copy of notice) (19 CFR 111.29(a))

What is the broker's policy regarding the filing of entry summary due without check?

Discuss with broker late files and summaries presented without checks (if applicable)

Discuss "bounced" checks (debit vouchers) with broker (if applicable).

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## RESPONSIBLE SUPERVISION AND CONTROL

Is the qualifying licensee(s) actively providing supervision?      Yes ( )      No ( )

If no, who is providing responsible supervision and control?

What system does the broker have for notifying employees of changes in Customs laws, regulations, rulings and procedures?

Are there Standard Operating Procedures for employees to follow?

How often are SOP's updated?

What training program/materials are provided to new employees?

What on-going training program/materials are provided to all employees?

What is the process for correcting entry rejects?  
(19 CFR 111.1; 19 CFR 111.19(d); 19 USC 1641(b)(4); 19 USC 1641(d))

Is the licensed employee qualifying the permit involved in correcting entry rejects?

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## **RESPONSIBLE SUPERVISION AND CONTROL (continued)**

Processing of CF 28, 29, rejects, change entries, etc. What steps are taken in exchanging information, regarding “change entries” with other offices within the district, if any? (i.e., airport vs. seaport)

Discuss broker’s entry reject rate –Quota rejections are not counted and Census errors are counted as rejections.

How are census errors handled?  
(CSTs should be consulted regarding responses received to census errors.)

Who verifies that the census error sheets are properly attached to the entry package?

## **FILE MAINTENANCE**

What system is in place for tracking and maintaining entry files?

Filing system? By entry number? By reference number?

Who classifies the entries?

Who signs the entries?

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**SECTION III  
CLOSING OF REVIEW**

**(Back in the office)**

Query TECS for felons. (where available)  
(19 CFR 111.53(e))

Verify last receipt date of employee listing.  
(19 CFR 111.28(b)(1) & (2))

Discuss results with supervisor and send a follow up letter to broker. Any compliance issues, which have arisen as a result of the review, should be addressed in an appropriate manner.

Total hours expended \_\_\_\_\_



**C. Review of Employee List Submissions**

INTERNAL INFORMATION ONLY



#### **D. Powers of Attorney**

A power of attorney (POA) is a written statement legally authorizing a person to act for another. The person granting the authority is known as the principal or grantor, while the person being authorized to act is the agent or grantee. Brokers are required to obtain POAs from their clients before transacting customs business in their clients' names. However, a POA is unnecessary when the broker is acting as importer of record in the transaction.

Customs accepts both the Customs Form 5291 Power of Attorney and private alternatives. The wording and format of private alternatives do not have to match the wording and format found on the CF 5291. However, the language should indicate that the principal is granting authority to the broker to act as the principal's agent for customs business transactions. Also, brokers are required to include the alternative method of payment statement of 19 CFR 111.29 (b)(1) on POAs, or on attachments to the powers, executed after 1982. If the principal is a nonresident corporation, the power must contain a clause authorizing the agent to accept service of process on behalf of the principal. Nonresident corporations are also required to support the POA with documentation establishing the authority of the grantor to execute the power of attorney.

With one exception, POAs may be granted for unlimited periods. POAs issued by a partnership are limited to a period not to exceed two years from the date of execution. Consequently, a broker must obtain new POAs from partnership clients every two years.

Brokers keep POAs on file with their other records. POAs must be retained until revoked, and revoked POAs and letters of revocation must be retained for five years after the date of revocation or for five years after the date the client ceases to be an active client, whichever period is later. An "active client" means a client from whom a broker has obtained a power of attorney and for whom the broker has transacted customs business on at least two occasions within the preceding 12-month period.

A broker may transact customs business for a client on the basis of the receipt of a faxed power of attorney. The broker may retain the faxed power in its records. However, the broker is required to retrieve the original within a reasonable time should Customs ask to examine it.

The POA should list the full legal name of the principal and of the broker as well as any authorized trade or fictitious names. A simple name change or the acquisition of a new trade or fictitious name by either the principal or the broker will not affect the validity of existing POA. However, any POAs executed in the future should list the new name. A broker must obtain new POAs from existing clients when a business restructuring results in the termination of the legal existence of either the principal or the broker. For example, when two brokers merge and all customs business operations continue under the authority of the one survivor's license, the survivor must secure new POAs from the clients of the broker that ceased existence. Customs requires such clients to be notified prior to the merger, but grants the surviving broker an extendable 30-day grace period following the merger to obtain new POAs. (See *Position Statement on Execution of New Powers of Attorney Due to Merger, etc.*, 57 Federal Register 3083, January 27, 1992, Appendix 11.1). If the foregoing merger results in the creation of one new company, that company must apply for its own broker's license and get new POAs from all clients before starting customs brokerage operations. In another example, when a parent corporate Customs broker dissolves a subsidiary corporate Customs broker, the POA issued by the importers to the subsidiary are not transferable to the parent corporation. The parent corporation must obtain new POAs in its own name from those importers.

A POA must contain special authorization language if a broker wants to appoint another broker to make entry in a "Broker A-Broker B" situation. The "Broker A-Broker B" situation occurs when a client of the primary broker, "Broker A," has merchandise arrive in a port in which Broker A does not have a district permit. The client can avoid the trouble of having to find a local broker ("Broker B") to enter the merchandise by delegating that search task to Broker A. The delegation is accomplished by including special appointment language in the POA issued by the client to Broker A. The language frequently used is that the grantee broker is empowered "to authorize other Customs brokers to act as grantor's agent." When Broker A exercises this authority and appoints another broker, the other broker (Broker B) will be working directly as an agent of the client, not as a subagent of Broker A. Broker A creates this new agency relationship between the client and Broker B by executing a "subsidiary power of attorney" on the client's behalf. The client is listed as the principal and Broker B as the grantee agent, and Broker A signs the POA on the client's behalf in its capacity as attorney-in-fact.

(HQ 729207, January 6, 1986)

(19 CFR § 141.36)

(19 CFR § 141.37) (19 CFR 111.29(b)(2)(ii))

(19 CFR § 141.34) (HQ 224101, October 13, 1992)

(19 CFR § 141.46)

(19 CFR § 111.23(a)(2))

## **E. Broker Compliance and Regulatory Audit**

### **1. Regulatory Audit as a Compliance Tool**

The Regulatory Audit Division can be useful in managing broker compliance.

Regulatory Audit staff follow government auditing standards to ensure protection of government revenue and compliance with applicable laws and regulations.

The areas that Regulatory Audit can investigate and examine include, but are not limited to: the broker's exercise of due diligence; possible financial irregularities; adherence to record keeping requirements, proper supervision and control of a broker's business, etc.

Regulatory Audit presents their findings in a report, which may include recommendations for action to be taken by the port.

### **2. Background of Regulatory Audit**

The Office of Regulatory Audit is headquartered in Washington, D. C. The Director reports directly to the Assistant Commissioner, Office of Strategic Trade. Regulatory Audit Headquarters (RAD-HQ) is responsible for the general overview of the program and for providing policy, planning, and technical direction to the approximately 400 auditors in nine (9) Field Offices and twenty-nine (29) Branch Offices.

### **3. Referrals for Broker Audit**

Each year, generally in April, RAD-HQ formulates its annual plan for the next fiscal year. Regulatory Audit Field Offices submit candidate names to RAD-HQ. Port directors may make referrals to Field Offices using the Audit Referral Form (See Page 12.23). Broker management officers may make referrals through their port director using the same referral form.

### **4. Financial Compliance Audit**

When Customs questions the compliance of a Customs broker concerning financial issues, due diligence in paying monies, or supervision and control, the Broker District may request an audit of the broker's financial records by the Regulatory Audit Division using the Audit Referral form. The scope of this type of audit consists of compliance testing for:

- ◆ Duties and Fees: Accuracy and timeliness.
- ◆ Notice of Method of Payment: Informing brokerage clients they may pay Customs directly.
- ◆ Refunds to clients: Notification and payment accuracy and timeliness.
- ◆ Supplemental Duties: Notification and payment accuracy and timeliness.

If the audit is conducted, any findings and recommendations can be used as the basis for Enforcement Evaluation Team (EET) review and/or compliance action.

## 5. Broker Audit Program

The audit program is a guide which may be modified to meet particular audit conditions. All steps may not apply in every situation. Auditors revise the audit program to supplement coverage of the major audit objectives and concentrate on the most significant deviations or anomalies. A supervisory auditor must approve audit program modifications.

The steps of a broker audit are listed below. The objective of a broker audit is to determine the broker's level of compliance with the Code of Federal Regulations (CFR) Title 19, Part 111 and other applicable laws and regulations.

- ✓ **Planning and Preparation:** Auditors review information from various customs disciplines to determine the broker's previous and current relationship with Customs.
- ✓ **Systems Review:** Auditors look at the broker's systems to develop compliance tests. (Systems include accounting, data processing, customs procedures and related internal controls.)
- ✓ **Licensing and Permits:** Auditors review information to determine whether the broker is properly licensed and permitted to transact customs business on behalf of others.
- ✓ **Sampling Plan/Sample Selection for Compliance Tests:** Auditors develop a sampling plan and select statistical samples to test the broker's level of compliance.
- ✓ **Compliance Testing:** Auditors examine how the broker conducts its business to determine their level of compliance. Areas include, but are not limited to:
  - **Powers of Attorney:** Accuracy and maintenance of client and designated employee files.
  - **Recordkeeping:** Maintenance, storage and production (accuracy is tested in other steps)
  - **Automated Broker Interface (ABI) Statement Processing:** Accuracy and timeliness.
  - **Entry Documents:** Accuracy and timeliness.
  - **Duties and Fees:** Accuracy and timeliness.
  - **Notice of Method of Payment:** Notification to clients of optional payment directly to Customs.
  - **Refunds to Clients:** Notification and payment accuracy and timeliness.
  - **Supplemental Duties:** Notification and payment accuracy and timeliness.
  - **Bond Sufficiency:** When the broker acts as importer of record.
  - **Responsible Supervision and Control over customs business**
- ✓ **Complete the audit and issue the audit report to the Port Director.** The report will contain findings uncovered in the audit and may include recommendations for possible courses of action that the Port may take.

<b>OFFICE OF STRATEGIC TRADE REGULATORY AUDIT DIVISION (RAD)</b>  <b>AUDIT REFERRAL FORM</b>		1. IMPORTER /CONSIGNEE NAME	
		2. IMPORTER /CONSIGNEE ADDRESS	
		3. IMPORTER /CONSIGNEE IDENTIFICATION NUMBER	
		4. PRIMARY FOCUS INDUSTRY OR PROGRAM AREA	
		5. BOND TYPE AND NUMBER	
		6. PRIOR DISCLOSURE AMOUNT	
<b>REFERRAL INFORMATION (Complete all information)</b>			
7. RAD FIELD DIRECTOR'S NAME		8. RAD FIELD DIRECTOR'S PHONE NUMBER	
9. REFERRING OFFICIAL'S NAME AND TITLE	10. REFERRING OFFICIAL'S PHONE NUMBER	11. REFERRAL DATE	
12. PORT/STATEGIC TRADE CENTER(STC) DIRECTOR'S NAME	13. PORT/STC DIRECTOR'S PHONE NUMBER	14. APPROVAL DATE	
<b>REASON(S) FOR AUDIT ASSISTANCE</b>			
15. <u>REASONS/FACTORS FOR RECOMMENDATION</u> (If no reason is stated, the form will be returned) <ul style="list-style-type: none"> <li>A. Significant instance(s) of missing merchandise</li> <li>B. Evidence that false information was provided to Customs</li> <li>C. Evidence of fraud</li> <li>D. Evidence that appropriate documents were not filed</li> <li>E. Issues regarding recordkeeping and physical inventory reconciliation</li> <li>F. Other _____</li> </ul>			
16. <u>DESCRIPTION OF SIGNIFICANT RISKS/COMPLEXITIES</u> (Provide additional information, if needed) _____ _____ _____			
<b>ADDITIONAL INFORMATION (Complete where applicable)</b>			
17. DRAWBACK CLAIMANT NAME	18. DRAWBACK CLAIMANT NUMBER	19. DRAWBACK TYPE	
20. NUMBER OF UNLIQUIDATED DRAWBACK CLAIMS		21. VALUE OF UNLIQUIDATED DRAWBACK CLAIMS	
22. CUSTOMS BROKER NAME		23. CUSTOMS BROKER FILER CODE	
24. FOREIGN TRADE ZONE OPERATOR NAME	25. FOREIGN TRADE ZONE NUMBER	26. FOREIGN TRADE ZONE TYPE	
<b>AUDIT CONSIDERATION (Completed by RAD Officials)</b>			
27. RAD FIELD OFFICE CONDUCTING AUDIT		28. TIMEFRAME RAD AUDIT SCHEDULED	
29. RAD APPROVING OFFICIAL		30. APPROVAL DATE	

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## BROKER INFORMED COMPLIANCE

### A. Standard Informed Compliance for Brokers

Informed Compliance for brokers includes the elements of “Brokers 101,” Account Management, Risk Management, and common sense. Informed Compliance also includes education, counseling and overall communication. The Broker Management Officer should make broker informed compliance a collaborative effort with all appropriate divisions within Customs.

While informed compliance **MUST** be accomplished by Customs, the method for disseminating information is at the discretion of the port. The following are tools for informed compliance:

- Overall Communication
  - ◆ Education (see below)
  - ◆ Counseling (see below)
  - ◆ Using the broker account model, gather data (PATS, ESFAS, CAPPS) to determine issues where there is non-compliance. Ensure that broker is aware of non-compliant issues.
  - ◆ Open up communication on issues relevant to individual brokers.
  - ◆ Broker office visit for familiarization and to discuss any issues.
  - ◆ “Swap Assignments” is a program where the Customs employee shadows the broker for a day, and the broker shadows a Customs employee for a day (\***Important to remember** — privacy awareness and security issues).
  - ◆ Any other local procedures used to develop communication
- Education
  - ◆ Commodity seminars coordinated with the import specialists.
  - ◆ Entry seminars coordinated with the entry specialist.
  - ◆ Cargo seminars coordinated with the inspectors.
  - ◆ Internet addresses where brokers can download information.
  - ◆ “I am an Entry” training where the broker follows an entry from release to liquidation.
- Counseling
  - ◆ Determine least compliant areas, and use counseling to improve compliance.
  - ◆ Counsel in areas of high risk using Risk Management principles.

See the following publication on the Customs Website:

*What Every Member of the Trade Community Should Know About:*  
**CUSTOMS BROKERS**

## **B. Customs Brokers 101**

“Customs Broker 101” is designed to introduce an employee of a brokerage or an entry filer to customs processes and procedures. The goal is to educate the broker employee about customs operations resulting in improved communication, compliance, and understanding. Each port should utilize its creative energy to make this program dynamic, contemporary and interactive. In other words, it should not be a static program. It should be offered as an overview of what a broker should know about what takes place at Customs. The following is simply a guide from which to begin.

Frequency: Bi-monthly

Who should attend: All new employees of brokerages or other entry filers who will have interaction with any Customs office

### **WELCOME TO CUSTOMS BROKER 101**

- Introductions (10 minutes)
- Welcome  
*Port Director or Assistant Port Director for Trade*
- Customs History/Mission Statement/Port Organizational Structure (15 minutes)  
*Broker Compliance Officer*
- Cargo Arrival Operations — Chief Inspector or Cargo SCI (30 minutes)
- Manifests & Quantities
- Manifest Corrections
- Carrier Responsibilities
- AMS
- Enforcement Exams

### **BREAK**

- Cargo Release Operations — Chief Inspector or Cargo SCI (60 minutes)
- Entry Preparation
- Entry Presentation within Port
- Possible Outcomes of Entry Processing
- Processing Releases with Carriers
- Paperless Releases
- Inspector Overrides

- Intensive Examinations & CES Procedures
- Examination Findings and Examples of Discrepancies
- Sampling Procedures.
- Detentions and Seizures

## **BREAK**

- Entry Summary Processing (90 Minutes)
- Cashier Operations — Entry Supervisor
- Quota Processing — Entry Supervisor
- Team Review Procedures — SIS or Team Leader
- Samples & Lab Reports
- CF 28 & 29 Processing
- Liquidations
- Protests
- Reasonable Care & Due Diligence
- Penalty Actions & Liquidated Damages

When the class is completed, the student should be informed of where he or she can find information on the Internet. Resources to which a broker should have access are:

- **Customs WEB address ([www.customs.gov/](http://www.customs.gov/))**
- **Broker Handbook (broker edition)**
- **Customs Regulations**
- **Harmonized Tariff Schedule of the United States**



United States Customs Service  
Certificate of Participation  
Presented to:

**Joan Broker**

Who attended the  
**Broker 101**  
at the Port of Nowhere, USA  
on July 25, 2001

P.D.  
Port Director

## BROKER PENALTIES

INTERNAL INFORMATION ONLY

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## MANAGING BROKER ACCOUNTS (PROTOTYPE)

### A. Account Management

#### 1. Introduction

The U. S. Customs Service acknowledges the importance of the broker community in our commercial activities. Brokers provide a vital service as intermediaries between the government and the importing and exporting community, and have played a continuing and significant role in the success of our automation efforts and other commercial initiatives.

Because of the broker's integral role in conducting customs business, a high standard of broker performance and compliance is critical to the efficiency of the Customs Service and the accomplishment of the Customs mission.

Accordingly, the fundamental goal of broker accounts is to promote compliance through the evaluation of broker performance, the identification of problem areas, and the joint development of action plans to improve those areas of concern identified by both the broker and Customs.

The ability of the broker account team to perform their duties successfully depends largely on the communication relationship that is established and developed between the broker and the account team. Improving the level of communication between Customs and the broker, while simultaneously improving the level of broker compliance, are major objectives of broker account management. The two goals are closely intertwined; - improved communication will manifest itself in improved compliance, while working to improve compliance at the account level will cultivate more effective communication.

The data obtained from both Customs and the broker will be exchanged and jointly evaluated through open communication and discussion. This initiative is not intended to produce a report card. Rather, it is meant to provide a tool to be used by both the broker and Customs to promote and improve compliance, and to maintain a high standard of professionalism in the relationship between Customs and the broker in their daily interaction.

#### 2. Account Management — General

Broker accounts are broker-based rather than importer-based. Data is gathered and monitored based on broker performance rather than on the broker's clients/importers. Broker accounts focus entirely on the broker's compliance and true broker errors. Customs recognizes that a broker may or may not have control over all compliance issues that come to light. Broker responsibility will be determined and assessed through analysis of the data and discussion between the account team and the broker.

The compliance focus of broker account management is twofold:

- 1) Monitor and improve compliance measurement rates
- 2) Monitor and resolve broker compliance issues

Broker accounts are most effectively managed by a broker account team. The broker account team should include:

- Entry Officer or Entry Specialist
- Import Specialist
- Trade Inspector

The broker account team should identify a team leader to serve as the single point of contact between Customs and the broker. Since entry specialist teams are filer based and broker compliance is generally a function of entry, the entry officer or specialist assigned to the broker account team may logically serve as its leader. However, the most qualified person should be named team leader regardless of career track. A qualified team leader has knowledge of the issues, has good leadership skills, and is an excellent communicator.

The broker's Customs ABI representative (ACS specialist) is also a source of information and data for the broker account team.

Management of large broker accounts — brokers with multiple offices in various parts of the country — should evolve slowly. Broker account teams should gather data and select indicators based on the broker's activities and potential problem areas. When improvement has been achieved at the local level, the broker account is ready to be expanded. Broker locations for initial expansion should be a joint decision between the broker and the broker account team. As more success is achieved, the broker account can continue to expand until all broker offices and locations are included in the account and managed by the broker account team.

Broker accounts are national accounts. Individual ports with serious, unresolved, or multiple issues with a broker that has been identified as a national broker account should notify the team leader of the broker account team to discuss issues and possible resolutions. Broker compliance and/or 19 USC 1641 penalties should not be initiated by individual ports against national account brokers without first contacting the team leader of the broker account team.

The team leader serves as coordinator and point of contact for both the broker and Customs offices. When a port notifies the team leader of a problem area, the team leader or team member should contact the broker's corporate office. The broker's main office then contacts the problem office to develop an action plan or resolution. The team leader reviews the action plan and forwards it to the local Customs office for approval and implementation. Customs at the local port should work with the broker's employees at their location to resolve their issue(s). The team leader continues to monitor the situation and assists with the resolution if the local Custom's office and broker are unable to resolve the problem.

The broker account team leader will work with other Customs offices to address broker account concerns and uniformity issues. Disagreements will be facilitated at the lowest possible level. If the broker account team is unable to resolve an issue at the port level, it will be referred to Headquarters for further facilitation.

Broker accounts are not intended to hold the broker to a higher standard of performance than other brokers. The account concept should provide the broker with meaningful, uniform data, and assist the filer in identifying and resolving problem areas.

Broker accounts are not meant to eliminate broker penalties. Penalties can and should be issued when required in certain instances, particularly when evidence of fraud is uncovered. However, every effort should be made to resolve broker issues through informed compliance, education, and counseling.

## **B. Steps to Broker Account Management**

- Headquarters selects a broker and corresponding Customs office for participation.
- Port office selects members of the broker account team.
- Account team builds a broker profile and analyzes trade data.
- Team collects and analyzes national broker compliance indicators.
- Customs and the broker arrange initial meeting to discuss expectations and exchange data.
- Team establishes a relationship with the account by developing a communication link with the broker.
- Broker develops action plan(s) to address identified problem area(s).
- Account team monitors compliance measurement rates and broker compliance data.
- Team holds regular meetings with the broker to review data and progress with action plan(s).
- Broker account is expanded slowly as successes are achieved.

## **C. Broker Profiles**

Once the broker, the corresponding managing Customs office, and broker account team have been identified, the team should begin to develop a profile of their broker. This profile is developed using both information supplied by the broker and data compiled by Customs through data resources.

The amount of information contained in the broker profile will obviously depend on the size of the broker, the number and types of environments the broker operates in, and the volume of work produced by the broker.

Information supplied by the broker:

- Number and types of locations
  - ◆ Land borders
  - ◆ Airports
  - ◆ Seaports
  - ◆ Entry summary preparation offices
  - ◆ Locations where Customs records are stored
- Volume for each location
  - ◆ Number of cargo releases
  - ◆ Number of entry summaries prepared/filed
- Number and type of broker operations that interact with Customs
- Employee information
  - ◆ Recruitment practices
    - Screening of prospective employees for felony convictions
    - Method of notifying Customs of new hires and terminations
- Number of employees involved in Customs operations
- Employee training
  - ◆ Introductory training for new hires
  - ◆ On-going training for employees
- Supervision and control
  - ◆ Internal SOPs for Customs operations
  - ◆ Distribution of internal pipeline information
  - ◆ Employee access to information published by Customs (HTS and Customs Directives)
  - ◆ Quality assurance of outgoing work
- Broker/client relationship
  - ◆ Procedures for advising clients of payment options (to Customs or broker)
  - ◆ Procedures for verifying client importer of record number
  - ◆ Procedures for payment to Customs on behalf of client
  - ◆ Procedures for processing refunds
- Involvement with informed compliance initiatives
  - ◆ Ongoing company enforced compliance programs
  - ◆ Broker compliance penalties issued within the past year

- Information compiled by Customs
  - ◆ Entry types, number of entries per entry type, and value of entries
  - ◆ Commodities imported by filer
  - ◆ List of broker clients by value of importations
  - ◆ List of commodities imported by top clients
  - ◆ Paperless entry statistics
  - ◆ ABI Client Representative data
    - ABI statistics
      - ❖ Percentage of ABI vs. non-ABI entries
      - ❖ Percentages of ABI/A, ABI/S, and ABI/N entries
    - ABI error information

This information is gathered to identify the broker’s environment and to analyze his/her trade data. It should be monitored on a six-month or yearly basis to identify and recognize changes in the broker’s profile.

#### **D. Compliance Rate and Indicators**

When working with broker accounts, it is important to keep in mind that a broker’s “performance” is evaluated by focusing on two specific areas: the compliance measurement (CM) rate and the broker compliance data.

##### **1. Compliance Measurement “CM”Rate**

A broker’s CM rate is obtained partially from Customs Automated Port Profiling System (CAPPS). CAPPS contains data on the compliance or non-compliance of lines, which are designated by ACS as stratified compliance lines. These stratified compliance lines make up a statistically valid sample of the total population of lines, which are extracted, from ACS after summary review with “discrepant” or “non-discrepant” findings.

Once the review period has been determined, CAPPS can be accessed to determine a filer’s CM rate. This CM rate should be used as a performance indicator that will be shared with the broker. It is important to keep in mind that some of the indicators may point to issues outside the broker’s realm of control, i.e. country of origin marking. The analysis of a low compliance rate may reveal that the problem is with the importer and not with the broker.

The Entry Summary Findings Analysis System (ESFAS) is also a useful tool when developing an account profile. This module contains ISDA findings, which originate with import or entry specialists. Entry summary findings are useful to detect patterns of discrepancies, such as repetitive misclassification of the same merchandise.

Again, a low compliance rate is not necessarily indicative of broker/Customs issues, but perhaps broker/client issues. Researching “discrepancies” and sharing the results of this research with the broker will help both Customs and the broker understand what types of errors are being made, when they are being made, and what type of action plan can be implemented to prevent these errors from occurring in the future.

A low compliance rate should act as a flag to let Customs know that research should be done to determine why the rate is low.

## 2. Broker Compliance Indicators

The implementation of the Port Activity Tracking System (PATS) is a great asset to local ports when compiling broker compliance data. Broker compliance data consists, among other things, of the issuance of entry summary rejection data, CF 28 (Request for Information), CF 29 (Notice of Action), and CF 4647 (Marking Notice) issuances.

The collection and analysis of this data will help us show the broker how many entry summaries were rejected and for what reasons, and how many CF 28's, CF 29's and CF 4647's were sent and why. Again, it is important to remember that high numbers in these areas do not necessarily indicate that there is a problem with the broker. **These are compliance indicators, not necessarily broker oriented problems.** A goal in gathering and analyzing this data is to provide the broker with specific data regarding their day-to-day interactions with Customs.

Ports, which do not currently have PATS, will have to utilize whatever internal databases/tracking systems they have to monitor broker compliance indicators.

As an indicator, the number of CF 28's issued to a broker does not necessarily imply negative connotations. While a high number of CF 28's may appear to be a cause for concern, it is important to remember that CF 28's are routinely issued on stratified compliance entries and on some American Goods Returned entries over a certain value, simply to request more information.

The same can be said of the number of CF 29's issued. For instance, a CF 29 is issued as the result of a positive NAFTA determination, tells the broker that Customs agrees with the NAFTA claims. This is just one example of when the issuance of a CF 29 to a broker does not have a negative implication.

Marking Notices (CF 4647's) are issued for marking issues, which are usually out of the broker's control. Brokers cannot be held accountable for issues which are out of the realm of their control, so the number of CF 4647's issued should be used as a general indicator, not a measurement of broker compliance.

Meetings should be held between the Customs broker account team and the broker to discuss and review this data and determine if these indicators are at the appropriate level for that broker. Through this open dialogue, patterns can be detected which would lead to issues which could be resolved that may reduce the numbers. An example of this would be an Import Specialist issuing numerous CF 28 Requests for Information for the same shipper/importer/commodity. Simply opening the lines of communication could lead to a better understanding of what Customs or the broker is seeking.

## 3. ACS Dataqueries

The Broker Account Prototype and the National Scripting Team have developed ACS dataqueries to gather data on a specific broker. The list of dataqueries follows:

<b>Dataquery Title</b>	<b>Type of Records</b>	<b>Data Retrieved</b>
NST.PROFILE01	ACTIVE	Breakdown of entry types for filer (includes number of entries and total entry values)
NST.PROFILE01a	ARCHIVED	Same as PROFILE01
NST.PROFILE02	ACTIVE	Breakdown of tariff numbers imported by filer (includes number of lines and total line value)
NST.PROFILE02a	ARCHIVED	Same as PROFILE02
NST.PROFILE03	ACTIVE	Top importers by filer (includes total line count and total line value)
NST.PROFILE03a	ARCHIVED	Same as PROFILE03
NST.PROFILE04	ACTIVE	Breakdown of tariff numbers for top importer from PROFILE03 (includes total line count and total line value)
NST.PROFILE04a	ARCHIVED	Same as PROFILE04
NST.PROFILE05	ALL	List of non-Bullseye entries with single entry bonds
NST.PROFILE06	ALL	List of unresolved entries
NST.PROFILE07	ACTIVE	List of rejected entries (not ABI system rejects)
NST.PROFILE07a	ARCHIVED	Same as PROFILE07
NST.PROFILE08	ALL	List of no-file entries
NST.PROFILE09	ALL	List of not or partially-paid entries
NST.PROFILE10	ACTIVE	List of Liq. Dam. Entries
NST.PROFILE10a	ARCHIVED	Same as PROFILE10
NST.PROFILE11	RELEASE	List of cancelled entries
NST.PROFILE11a	SUMMARY	Same as PROFILE11
NST.PROFILE12	ALL	List of entries with open bills
NST.PROFILE13	ALL	List of entries with debit vouchers
NST.PROFILE14	ACTIVE	Breakdown of statement statistics
NST.PROFILE14a	ARCHIVED	Same as PROFILE14
NST.PROFILE15	ACTIVE	Breakdown of paperless statistics
NST.PROFILE15a	ARCHIVED	Same as PROFILE15

These dataqueries are accessed through ACS dataquery and have been set up so all the user has to do is replace the filer code and the date range for each dataquery.

This list of dataqueries is intended to be used to gather data when preparing the broker profile. Some of the dataqueries are run to simply identify the environment (PROFILE01 — PROFILE05 and PROFILE14 — PROFILE15), and the remaining dataqueries are run to provide performance indicators (PROFILE06 — PROFILE13).

The performance indicators gathered from the dataqueries will provide the broker account team with information that should also be shared at meetings with the broker. It is important for the broker to see what data Customs has collected. Prepare reports using all of this data to bring to the meetings and review with the broker. If necessary, review each unresolved entry, each rejected entry, no-file entry, not-paid entry, liquidated damage case, cancelled entry, open bill, and debit voucher with the broker. These indicators are the ones that can be worked with immediately to provide an instant increase in compliance.

Customs has been collecting compliance data for years, telling brokers about their compliance, or non-compliance, and expecting it to improve. Customs is now sharing this data that we have been collecting in the hopes that improved communication will result in higher compliance. The analysis and discussion of this data will help determine where responsibility for the discrepancies lies (with the broker or their client) and will help to open the lines of communication and make both Customs and the broker more aware at what data the other is looking.

## **E. Information Sharing**

Providing broker compliance data to the broker is a key component of broker account management. Both compliance measurement data and broker compliance information should be shared with the broker account. Monitoring this data can be a very time consuming process, particularly for broker account teams with multi-office and large volume brokers.

Broker compliance statistics are more difficult to capture and monitor. Locations with access to PATS (Port Activity Tracking System) will have local data on entry summary rejections, CF 28s (Request for Information), CF 29s (Notice of Action), and marking notices (CF 4647) more readily accessible. Every effort will be made to expand the broker account prototype to locations where PATS is available.

For locations without access to PATS, maintaining and retrieving broker compliance data is more difficult. The local indicators selected to monitor the account will be determined by the size and environment of the broker, potential areas of difficulty, and staffing availability at the port, where the account is managed. Dataqueries can be very useful, particularly when the account is expanded beyond the local port area.

With broker account management still in its developmental phase, local ports will be expected to assist the broker account port with retrieving data. Since broker accounts are a prototype, account management is a collateral duty, resulting in a marked increase in workload assignment, particularly for the team leader. As broker accounts develop and expand, workload will become a more significant issue.

A second issue, in addition to workload concerns, is the uniform extraction of data. For broker account management to be successful, broker information must be accessed consistently from port to port, so both the broker and the account management team can accurately assess performance and draw valid conclusions. As broker accounts expand, Customs will consider several options to retrieve broker data, including The Office of Strategic Trade (OST) at Headquarters, Strategic Trade Centers (STCs), and offices within Trade Programs.

Once the broker data has been retrieved and assembled, the account team should arrange an initial meeting with the broker to discuss expectations and distribute the information. Both the account team and the broker should clearly state and openly discuss their expectations for working together. At this initial meeting, Customs should present the broker with a list of questions about the broker's organization and operating procedures. After approximately one month, the account team and the broker should meet again to exchange information and feedback on the account process.

When evaluating and analyzing compliance data to determine discrepancy rates, the total number of entries filed by the broker should be considered. Large volume broker accounts will likely have the greatest number of discrepancies when compared to smaller volume brokers conducting business in the port. However, when the account's error numbers are compared to the total volume of entries, the broker's discrepancy rate may be much less significant than expected. Conversely, when the broker account is the largest volume broker in a port, that broker's discrepancy totals and compliance rate will obviously have the greatest impact on the port's overall compliance rates. This dilemma should be openly discussed with the broker account as data is shared and action plans are formulated to correct problem issues.

## **F. Action Plans**

The account team's role is to help the broker find solutions to its difficulties, not to necessarily "fix" the problem for the broker.

Once the most pressing issue(s) have been identified and agreed to by the broker and the account team, the account creates an action plan to resolve the problem area(s). The action plan should identify the issue, list planned steps for resolution, and indicate a target date for completion. Action plans are submitted to the broker account team for approval.

Once the broker account has expanded beyond the team's port, and issues have been identified at other Customs locations, the broker should submit action plans to remedy those situations as well. These action plans should also be submitted to the broker account team for approval. The account team should discuss and coordinate the action plan and with the local Customs port that is involved with the issue. Comments or suggestions from the local port could be incorporated into the plan as appropriate. The broker account team leader should monitor the progress of any action plans.

New action plan items can be identified and added as issues are resolved and removed. The goal of an action plan is to raise the broker's compliance to eliminate problem indicators and the need for any action plans

## **G. Monitor Account and Measure Progress**

During follow-up meetings with the account, broker account data and trends should be continually assessed. Compliance problems and improvements should be addressed. Action plans should be updated as necessary. Meetings should be held as often as the account team deems necessary. As progress is made with action plans and compliance improves, meetings need to be held less and less often.

## **H. Account Maintenance**

Once action plans have been completed and the broker account is highly compliant, it is no longer necessary to have regularly scheduled meetings. However, the account's data should be reviewed quarterly to identify any shifts in patterns or a return to previous difficulties. Significant changes in the data indicate that a meeting with the broker is necessary and should be scheduled.

The team leader should contact other Customs offices where the broker conducts business at least twice a year to ensure that no new problems have developed.

The broker account should be contacted several times a year to ask if they have any concerns or issues to discuss.

## **I. Benefits of Broker Account Management**

- Broker accounts provide a primary point of contact for both the account and Customs.
- Accounts help to improve communication between Customs and brokers.
- Accounts assist in increasing uniformity, as well as broker compliance.
- Issues are formally identified and scheduled for resolution in an action plan in a cooperative spirit.
- Both Customs and the broker account gain increased understanding of each other's responsibilities, functions and problems.
- Reduced workloads for both Customs and the brokers.

## **J. Case Study**

### **Selecting and Managing a Broker Account**

INTERNAL INFORMATION ONLY

INTERNAL INFORMATION ONLY

INTERNAL INFORMATION ONLY

INTERNAL INFORMATION ONLY

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ALL APPENDICES EXTRACTED: INTERNAL INFORMATION

DEPARTMENT OF THE TREASURY  
UNITED STATES CUSTOMS SERVICE

**APPLICATION  
FOR  
CUSTOMS BROKER LICENSE EXAM**

19 U.S.C. 1641; 19 CFR 111.13

OMB No. 1515-0076; see bottom of form for Paperwork Reduction Act Notice.

2. RESIDENCE ADDRESS (If different from Block 1; if same, write "SAME")	1. APPLICANT'S NAME AND ADDRESS
4. DOES THE APPLICANT SEEK ACCOMMODATIONS UNDER THE AMERICAN DISABILITIES ACT?  <input type="checkbox"/> NO <input type="checkbox"/> YES (Explain in Block 11)	3. CUSTOMS PORT
<b>SECTION I</b>	
6. DATE OF BIRTH (MM/DD/YY)	7. BIRTHPLACE (City & State)
8. SOCIAL SECURITY NO.	9. HOME PHONE NO.
10. BUSINESS PHONE NO.	5. IS THE APPLICANT AN OFFICER OR EMPLOYEE OF THE UNITED STATES?  <input type="checkbox"/> NO <input type="checkbox"/> YES (Explain in Block 11)
11. REMARKS (In responding to questions above, include Block no. If more space is needed, continue on blank sheet of paper.)	

**SECTION II -- CERTIFICATION**  
*(WARNING: Any misstatement of pertinent facts in this application constitutes sufficient grounds for denial of the application.)*

I, \_\_\_\_\_ certify that the statements contained in the foregoing application and supporting attachments thereto are true and correct to the best of my knowledge and belief.

15. SIGNATURE	16. DATE
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Privacy Act Notice: Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), as amended, notice is hereby given in accordance with 5 U.S.C. 552a(e)(3) that the authority to collect information on Customs Form 3124E is 19 U.S.C. 1641; 5 U.S.C. 301; Reorganization Plan No. 1 of 1950; Treasury Department Order No. 165, Revised, as amended; 19 CFR Part 111. The principal purpose for collecting the information is to enable the Customs Service to conduct a background investigation on the applicant, in the event the applicant passes the exam, and thereby determine whether the applicant meets the criteria established for the issuance of a customs broker's license. The information, collected and contained in the applicant's file, may be provided to those employees of the Customs Service and the Department of the Treasury who have a need for the records in the performance of their duties. The information may also be used, when deemed appropriate, to recommend to the Commissioner of Customs that disciplinary action be initiated, and further provided to the Department of Justice for its use in connection with appeals from orders resulting in the suspension or revocation of licenses. Similarly the information may be furnished to other government agencies which have an interest in the broker or in the situation that led to the disciplinary action.

Disclosure of the requested information including the Social Security number (SSN) is voluntary. The SSN will be used, in the event the applicant passes the exam, as an identifier in conducting a background investigation and will be used as an identifier throughout the career of the customs broker. Failure to provide any or all of the information requested may result in the Customs Service's inability to conduct the background investigation as required prior to the issuance of a license.

Paperwork Reduction Act Notice: The Paperwork Reduction Act Notice of 1995 says we must tell you why we are collecting this information, how we will use it, and whether you have to give it to us. We ask for the information to carry out the Customs Service laws of the United States. We need the information collected on the form to ensure the public is serviced by respectable agents who must account to Customs Service in handling the revenues generated in the duty collection process. Another major use of this form is to enable the Customs Service to conduct a background investigation on the applicant and thereby determine whether the applicant meets the criteria established for the issuance of a customs broker's license. Your response is required to obtain or retain a benefit.

The estimated average burden associated with this collection of information is 10 minutes per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington DC 20229. **DO NOT send completed form(s) to this office.**